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PSYCHO-LEGAL ASPECTS OF RAPE

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QUANTUM VALERE POTEST.



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## CHAPTER I

### INTRODUCTION

Rape is an act of violence generally perpetrated by a male against a female. As a sex-linked crime, the incidence of rape may also reflect the cultural attitudes held by the dominant governing group. For thousands of years, males have been valued more than have females. When a female was raped or otherwise violated, her assailant was punished (if he was punished) because of her relatedness to another man. Daughters, wives, and servants were protected primarily because the rape would devalue the male possessor's property. Only in recent times has it begun to be recognized that the rape has profound effects on the female victim far beyond any cultural devaluing process.

A few changes have occurred in social attitudes toward rape. One change focuses on the actual victim who is violated. This occurrence closely followed the publication of accounts of women seeking revenge against their rapist(s). For example, Inez Garcia shot and killed Miguel Jimenez and missed Louis Castillo, both of whom she said had raped her (Blitman & Green, 1975). Ms. Garcia was initially convicted of second-degree murder; later, she was acquitted when the appeals judge allowed evidence supporting her story of rape to be introduced. JoAnne Little was tried on charges of first-degree murder, which carries an automatic death sentence in North Carolina, for stabbing jailer Clarence Alligood eleven times with his own ice pick. The autopsy report

contained evidence of recent sexual activity. Moreover, Mr. Alligood was found naked from the waist down. Although Mr. Alligood had been stabbed in the legs, there were no holes in his pants (Davis, 1975). Ms. Little was convicted of murder, but her conviction was overturned when the appeals court allowed evidence supporting her rape charge to be introduced.

Much of the current controversy concerning rape involves the changing concepts of individual rights and criminal justice. In order to obtain an understanding of the dynamics of rape trials within the criminal justice system, a multifaceted investigation must be initiated. The investigation must consist of three major facets: (1) the legal requirements for the establishment of the crime of forcible rape; (2) the psychological factors which operate on both a cultural and personal level; and (3) the factors which operate during the trial itself. Each of these topics must be considered when investigating the variables affecting the verdict of any rape trial.

## CHAPTER II

### RAPE: AN OVERVIEW

#### A. Rape in Society

Delineation of the offenders, victims, and the crime of rape has been recent. The details vary geographically, individually, and temporally, yet certain consistencies appear. Rape is primarily a crime of youth for both offenders and victims. Physical and/or nonphysical coercion are usually present. Many victims know their assailants. These and other findings were not readily available in a concerted documented form until Amir (1971) initiated a comprehensive investigation of the crime and noted the following.

Forcible rape is mainly an intraracial event.

The age group 15 to 19 years shows the highest rates for both victims and offenders.

Both the victim and the defendant are usually unmarried.

The offenders are usually of low socio-economic status.

Usually the victim and the defendant live in the same area.

The most common hours in which rape occurs are 8:00 p.m. to 2:00 a.m., especially on weekends, with Saturday being the peak day.

Of the rapists in this sample, 50 percent had a previous arrest record.

Nineteen percent of the victims in this study had a prior arrest record, with the highest proportion for some type of sexual offense. Approximately 70 percent of the assailants planned the rape well in

advance; another 11 percent planned the rape in detail. The types of nonphysical coercion used by these rapists were temptation, verbal coercion, intimidation by physical gestures, and intimidation with a weapon. The amount of violence inflicted on the victim was as follows:

1. 15 percent used no physical force;
2. 29 percent used roughness;
3. 25 percent used "nonbrutal" beatings (requiring no hospitalization);
4. 20 percent used brutal beatings (requiring hospitalization); and
5. 12 percent choked the victim.

The victims responded in the following fashion:

1. 18 percent of the victims put up a strong fight;
2. 27 percent resisted; and
3. Over 50 percent exhibited submissive behavior.

In comparison, 18 percent of the rapists studied in a Victoria, Australia sample punched or beat the victim to the point of unconsciousness (Hodgens, McFadyen, Feilla & Daly, 1972). The rapists who had no accomplices overcame 39 percent of the victims in a struggle; one-third threatened or intimidated the victim. The victims capitulated for a variety of reasons: 52 percent required severe physical coercion, others submitted due to the intensity of instilled fear.

Radzinowicz (1957) investigated the incidence of sex offenses occurring in England and Wales during 1954, and categorized offenses into the following types: indecent assault on females, 50 percent; attempted unnatural acts and assaults on males, 21 percent; indecencies with males, 13 percent; statutory rape, 9 percent; unnatural offenses, 7 percent; rape, 2 percent; incest, 2 percent; statutory rape of females under the



age of 12 years, 1 percent. In comparison, sex offense figures collected by the New Jersey State Police in terms of percentages are as follows: exhibitionism, 18 percent; rape and statutory rape, 45 percent; perversion, 14 percent; commercial sex, 7 percent; and unclassified, 16 percent (Tappan, 1950).

Toch (1961), in a review of the literature, makes the following conclusions. Only a small proportion of sex offenders, approximately 20 percent, uses force or duress on the victim. Contrary to public opinion, offenders convicted of forcible rape do not show subnormal intelligence. They are not found to be lower in intelligence than persons convicted of statutory rape, incestuous relations, and bestiality. When convicted sex offenders do not receive psychological treatment, they frequently are reconvicted for both sexual and nonsexual offenses.

Many victims of rape know their assailants. One study reported that 78 percent of the victims aged 1 to 12 years knew their assailants, as did 82 percent of the 13 to 17 year old victims, 37 percent of the 18 to 24 year olds, and 28 percent of the group 25 years old and older (Hayman, Stuart, Lewis & Grant, 1968). In contrast, the National Commission on the Causes and Preventions of Violence found that 53 percent of all rape victims were total strangers to their assailant(s); 30 percent were slightly acquainted; 7 percent had a family relationship; and 3 percent had a previous close association (Brownmiller, 1975, p. 351).

Any males, and particularly all females, are potential sexual assault victims. No easy way to avoid the potential for sexual assault exists. For example, in the District of Columbia, 82 percent of the rape victims studied had "good" reputations (Griffin, 1971). Traditional and highly moral persons may be victimized as readily as "immoral" or

nontraditional persons when vulnerable to an attack or due to certain demographic characteristics. Age, intelligence, socio-economic status, and locale will often be determining factors of vulnerability. The very young, the aged, and the mentally handicapped are frequently victimized. For example, Blake (1977) reported that most of the victims seen at the Sexual Trauma Center, which operates in conjunction with the Central Emergency Medical Service of the San Francisco Department of Public Health, are in the age bracket of 18 to 25 years old. Also, Blake (1977) noted that prostitutes and homosexuals are frequently seen to be victims of violent sexual assault, and their assailants tend to be more brutal.

#### B. Disposition of Cases

The FBI Uniform Crime Reports (1975) indicates that the sex age group most often arrested for this crime were males aged 16 to 24 years. Disposition of the charged rapes were as follows:

51 percent of the charges were cleared by arrest.

Of those arrested, 58 percent were prosecuted.

46 percent of the prosecutions were dismissed or acquitted due to prosecution problems.

42 percent of those prosecuted were found guilty of forcible rape and 12 percent were convicted of lesser offenses.

Thus, from the total number of reported rapes, 12.42 percent of the assailants were eventually convicted of forcible rape.

Some national statistics as provided by the FBI help provide a broader picture of the problem of rape. The FBI Uniform Crime Reports (1975) included assaults to commit forcible rape with the statistics on forcible rape proper. As reported by the FBI in 1975, 56,090 forcible rapes were reported--51 reported rapes per every 100,000 females in the

United States. This rate comprises 5 percent of the total volume of violent crime. The volume of forcible rape has increased 48 percent over the 1970 figures and increased 6 percent over the 1976 figures. Of the reported crimes, 74 percent were actual rapes by force, with the remainder attempts or assaults in order to commit forcible rape. As a national average, 15 percent of the reported rapes were classified as unfounded. This figure does not differentiate between false accusations and those unprosecutable rapes in which the police cannot legally or evidentially establish a prosecutable case. Police officers are more likely to judge a reported rape as legitimate or "founded" if it involves a rape perpetrated by a stranger and involving overt violence (Police discretion and the judgment that a crime has been committed, 1968). Of all of the "unfounded" rapes reported to the New York Police Department in a six-month period in 1975, only 4 percent were actually found to be false charges.

### C. Patterns of Rape Interactions

A consistency in the patterns of planned rapes emerge. Selkin (1975) identified four distinct phases. In phase one, the rapist selects a vulnerable woman in an accessible environment. The second phase involves the confrontation of the victim. The rapist threatens her sufficiently that she must respond to him in some fashion. If her response is submissive or fearful, he knows she can be intimidated. In phase three, the actual rape is perpetrated. In the final phase, the post-rape interaction, the rapist may act apologetic, try further intimidation to prevent any report to the authorities, or physically harm or even murder the victim.

#### D. The Rape Victim and the Psychological

##### Response to Rape

Medea and Thomson (1974) found the following pattern of results among rape victims:

42 percent said they felt afraid of men;

28 percent said it affected their sex lives;

27 percent felt less independent or more afraid of being on their own;

23 percent said it damaged their trust in male-female relationships;

18 percent felt worthless or lost self-respect;

17 percent felt hostile toward men;

10 percent sustained physical injuries;

7 percent reported suicidal impulses; and

5 percent reported nightmares.

The victim reactions to the rape as a stressful situation goes through four general stages, although the intensity and duration of these stages vary (Notman & Madelson, 1976). In the anticipatory or threat phase, anxiety can cue the individual regarding the potential danger inherent in a given situation. In the impact phase, the individual victim responds with varying degrees of disintegration to the rape experience. The amount of trauma and the adaptive capacity of the victim function as parameters. The post-traumatic or recoil phase is the phase in which the victim gradually regains emotional expression, self-awareness, memory, and behavioral control. Group support and a sense of community are of help in this stage, although the majority of women may be denied support by their "intimates" and the community. The

fourth stage, the post-traumatic reconstitution phase, directly concerns self-esteem. The victim, who has lost her sense of invulnerability, may blame herself for her lack of perception of the dangerous situation.

Notman and Madelson (1976) further discussed the general consequences to a victim of rape. They indicated that the sense of helplessness is heightened, conflicts about dependence and independence are intensified, devaluing self-criticism and guilt may interfere with trusting relationships with others, particularly men. Difficulty in handling anger and aggression are common reactions, as well as the experience of persistent feelings of vulnerability.

In the past, victims of rape have often been denied professional psychiatric services. The confusion concerning the rape issue in Freudian thought implies that rape happens to marginal people who in some way collude with the experience (Notman & Madelson, 1976). In other words, on some level the victim deserved what she experienced. The functions served by this view include protection of the current belief structure of the professional and protection from individual feelings of vulnerability and culpability. It avoids investigation of the violent objectification aspect of rape in favor of a sexual gratification focus. The professional is absolved from any guilt or responsibility by holding such a conceptualization of the dynamics of rape. However, these types of attitudes have been changing since women have become involved with the various phases of rape crisis intervention.

#### E. Victims as Jurors

As previously mentioned, many women do not report their rape(s) and will have occasion to serve as jurors at some time in their lives.

What effect will their victimization have on their services during a jury trial of rape? The effect of victimization among the jurors may well shape the deliberation proceedings. Two beliefs concerning the effects of victimization have been advanced (Heilman, Slochower & Deutsch, 1976). One belief holds that the experience of victimization will make one more sensitive and compassionate to other victims. The other states that victimization creates a need to disassociate oneself from, and reject, other victims. Much of the variance in reactions may be accounted for in terms of the effect of the victimization experience on the victim's self-regard. When victimization fosters a feeling of negative self-regard, the victim often rejects the self and similar others (Clark & Clark, 1947; Moriarity, 1974). The situation which fosters negative self-regard is any victimization which is attributed to personal characteristics or behavior. Rape is a good example of a crime in which the victim is held responsible for her own victimization. The element of chance selection is not accorded as much significance as is her responsibility to avoiding vulnerability. Somehow the rape becomes her fault, and a negative sense of self-regard closely follows her acceptance of fault.

Support for the hypothesized relationship between victimization and self-regard has been found in non-jury experimental studies. Heilman, Slochower, and Deutsch (1976) reported that victim-subjects behaved differently than nonvictim-subjects only when they believed that they had been responsible for their victimization. When self-regard was not derogated by the fact of victimization, no effect was found on attitudes concerning other victims. Thus, it seems likely that women jurors who have been raped at some prior time in their lives may respond in

diametrically opposed fashions. To the extent that they assume culpability in their own sexual assault, they logically would be expected to derogate the victim's story and acquit the defendant. If they reject personal culpability, they may serve as unbiased, objective jurors. Yet women may not be able to resist cultural, social, and personal prescriptions of responsibility and guilt for becoming the victim of sexual assault. The woman juror who accepts responsibility for her own victimization becomes an additional instrument in the victimization of another.

#### F. Summary

Certain consistencies in rape can be established. Forcible rape is mainly an intraracial event with predominantly youthful offenders and victims. Physical and non-physical coercion are used to subdue the victim. Over 50 percent of the victims exhibit submissive behaviors. Convicted sex offenders who do not receive psychological treatment are found to be frequent recidivists. Many victims know their assailants, particularly since often they live in the same neighborhood. Persons with good reputations may be victimized as readily as persons with "immoral" reputations, given a situation of vulnerability. The more vulnerable to assault the victim is, such as the very old or young and the mentally handicapped, the more likely they will be victimized. Few rapists are convicted, as indicated by the FBI Uniform Crime Reports. The rape interaction involves four phases: selection of the victim, confrontation, perpetration of the rape, and the post-rape interaction. Victims have reported a variety of reactions, ranging from personal changes such as lowered self-respect to interpersonal changes such as hostility toward men and loss of trust. The victim reaction also goes

through four general stages: the anticipatory or threat phase, the impact phase with varying degrees of psychological disintegration, the post-traumatic or recoil phase in which the victim regains emotional expression and behavioral control, and the post-traumatic reconstitution phase in which self-esteem must deal with personal vulnerability. Professional psychiatric services have recently become more responsive to the psychological needs of rape victims.

Rape victims who become jurors at some later date may respond with more sensitivity and compassion to other victims or may disassociate themselves from other victims. The variance may depend on the effect of the prior victimization on self-regard. If the victim juror assumes culpability in their own sexual assault, they would be expected to derogate the current victim. If they reject personal culpability, they may serve as unbiased jurors.



## CHAPTER III

### PSYCHOLOGICAL THEORIES ON RAPE

#### A. Analytic Psychology

Most psychological explanations regarding rape are derived from one of two historical positions, i.e., the analytic or Freudian view and the humanistic/feminist view. The most common theoretical position is derived from Freudian thought concerning the nature of male and female sexuality. In Freud's conceptualization (Cleckley, 1957), the energy behind the sexual instinct, termed libido, is always masculine. Libido is the fused sexual and aggressive personality energies. This suggests that Freud was fusing the sexual and aggressive energies of libido in theorizing of female sexuality as surely as he accepted their fusion in male sexuality. He postulated that any sexual activity on the part of the female must arise from her masculine component. The distinction between male and female sexuality was culminated when female sexuality was posited to contain a masochistic component rather than an aggressive component during sexual passion (Bromberg, 1956). In a footnote specifically addressing sexual attack on a woman, Freud (1901) states ". . . the attack of the man cannot be warded off through the full muscular strength of a woman because a portion of the unconscious feelings of the one attacked meets it with ready acceptance" (p. 181). Thus, the theoretical position bolstering the concept that "every woman wants to be raped" had been advanced in psycho-analytic literature.

The assumption of the fusion of sexual and aggressive personality components continues to find expression even in contemporary Freudians. In a psycho-analytic interpretation of the myth of Kainis, Devereaux (1957) reveals his underlying assumptions about the world by his application of male sexuality principles to those of female sexuality. In brief, the myth of Kainis involves a Lapith chief who had once been a woman. Kainis was raped by Poseidon, who then offered restitution by agreeing to grant any request she desired. She asked to be made a man and made invulnerable. Her desire was granted. After some time, Zeus incited the Centaurs to assault Kainis and he was killed. At the burial the corpse was found to be that of a woman. Devereaux interprets the myth of Kainis in terms of traditional psycho-analytic concepts such as the "female penis fantasy." He cites the notion that a woman may "acquire" a penis as compensation for her rape. Kainis has sought protection against forceful penetration and "refeminization." "There remains, of course, the possible resurgence of passive-submissive feminine wishes, which may find expression in the male by means of passive homosexual impulses" (Devereaux, 1957, p. 398). The essential point is that the dynamics of the interpretation have an unquestioned assumption about the nature of sexuality in general and about the distinguishable character of female and male sexuality. The heart of the assumption is the view of sexuality as a fusion of sexual and aggressive energies, with differing values assigned to male and female sexuality. Devereaux (1957) seems to assume that it is the penis Kainis desires rather than protection from rape, protection that her status of femaleness can never grant her. Passive-submissive "feminine" wishes are assumed to be the counterpart of male homosexual impulses, a view obviously consistent

with the concept of "penis-envy." In utilizing this framework it appears that all the world is structured around the penis. Freud (1959) theorized that a male child could respond with "horror of the mutilated creature or triumphant contempt for her" (p. 43) to the sight of a girl's genital region with two reactions, both of which might permanently affect the male's relation to women. In contrast, a female child's envy of the penis has the effect of fostering a sense of inferiority.

When she has passed beyond her first attempt at explaining her lack of a penis as being a punishment personal to herself and has realized that the sexual character is a universal one, she begins to feel the contempt felt by men for a sex which is the lesser in so important a respect, and, at least in holding that opinion, insists on being like a man (p. 44).

In addition, Freudian thought focused upon the necessity of eliminating "clitoral sexuality" as a precondition for the healthy development of femininity (p. 45). In this author's opinion, the Freudian focus is an unrealistic, undocumented basis on which to build a theory of female sexuality. Freud himself prefaced his work with the disclaimer that it "stands in urgent need of confirmation before its value or lack of value can be decided" (Freud, 1959, p. 41). It is unfortunate that his assumptions were accepted without proper scientific and humanitarian evaluation by his followers.

#### B. Humanism/Feminism

The opposing position of humanism/feminism rejects traditional male-originated theories of female sexuality as well as assignment of female responsibility for rape. Female sexuality is only now beginning to be self-defined: the elements distinguishing freely chosen sexuality and forced choice sexuality are yet to be psychologically delineated. Other issues which evolve from this include choices concerning sexual matters

but also relative power in sex. Power in sex is a common interpersonal issue and an issue in therapy situations. Addressing the problem of male therapists' sexual exploitation of female clients, Chesler (1974, p. 80) points out that the unconscious signals that the therapist in a psychiatric setting puts out are "Power, money, the promise of romantic love, the promise of instant identity, the promise of protection."

These are stimuli that women have been culturally conditioned to respond to in men. Outside the therapy situation, many women trade sexual favors to men in response to the same type of signals. The distinction between forcedly chosen and freely chosen sexuality is blurred when the one partner is in a powerless and deprived condition. Even so, forcedly chosen sexuality is not synonymous with forced sex regardless of the conceptualization of analytic psychology.

The confusion between consensual sexual activity and rape does not occur in feminist thought. The feminist position on the rape issue emphasizes the importance of societal influences by focusing upon such factors as encouragement of male violence and aggressivity, the structure of patriarchy, and the institution of heterosexuality (Caldwell, 1976), as well as the cultural view of women as the property of males. "Rape, as an issue, was a means of analyzing the psychological and political structures of oppression in our society," state Connell and Wilson (1974, p. 3). The tolerance and encouragement of aggression among males help structure a situation in which the male is given license to victimize the female. Research evidence indicates that mothers accept aggressive behavior toward themselves from sons more than from daughters, while fathers react in an opposite manner (Sears, Rau & Alpert, 1965). This sets a modeling precedent which may contribute to a child's idea of a

proper victim. The structure of patriarchy is a cultural influence which contributes to a "rape consciousness" in its participants. Patriarchy has been defined by Webster's (1969) dictionary as "a system of social organization marked by the supremacy of the father of the clan or family, the legal dependence of the wives and children, and the reckoning of descent and inheritance in the male line." Matriarchy is defined "as a system of social organization in which descent and inheritance are traced through the female line." The definition of matriarchy thus does not include mention of interpersonal supremacy, or legal or cultural dependence. Matriarchy does not seem to be based on power relations or the systematic oppression of any group. The treatment of rape under these two differing perspectives, however, highlights the oppressive base of patriarchy. Concern with the chastity of the rape victim with its conjoint emphasis on virginity and monogamy is a necessary concern only under a patriarchal system in which the woman is the property of the man, making her violation an indirect violation of him. The social utility of chivalry is in perpetuating a system in which the woman is protected by a man from other men. The creator of the original prototype of chivalry, embodied in The Knights of the Roundtable, was Sir Thomas Mallory, who was arrested and found guilty of repeated incidents of rape (Caldwell, 1976). At no point does chivalry recognize that the violation of a woman is her own violation, that she may be interested in seeking redress for her own motives, and that she is not responsible for the perpetuation of a crime in which she became a victim.

The institution of heterosexuality is also a contributing element in rape. The amount of conditioning in the culture encouraging heterosexuality is a powerful force. Heterosexuality in conjunction with

patriarchy defines the appropriate sex-roles and behaviors of its participants. The male is accorded the dominant position, the female is accorded the submissive posture. Aggression and violence are masculine provinces, whereas the female is relegated to passivity. Thus, heterosexuality becomes defined in terms of relative interpersonal power and creates a class of victims who have been conditioned toward those very traits which will work against freeing them from victimization. Additionally, males who totally accept the social definition of masculinity, i.e., a "real man's man," may derogate femininity as it has been defined and therefore derogate those persons who behave as socially acceptable females are expected to behave.

### C. Research

Rape from a feminist perspective is viewed as a fulfillment of the culturally based concept of male supremacy, a symbolization of offender inferiority, and an overcompensation for sexual inadequacy (Melani & Fodaski, 1974). Support for this conceptualization may be found in a study of Minnesota Sexual Aberrations (Glueck, 1952-1955). Of the rapists studied, 73 percent suffered moderate to severe anxiety after intercourse, and 63 percent regarded women in a negative derogatory manner. The rapist showed little to no concern for their partner's sexual satisfaction and a general lack of familiarity with the patterns in female sexuality. Karpman (1954) states that overcoming the victim's resistance was an important component for many rapists. It allowed simultaneous expression of sexual control and hostility toward the woman victim.

Fisher and Rivlin (1971) investigated the psychological needs of rapists by means of the Edwards Personal Preference Schedule. Rapists

as compared to adult males score higher on introspection, abasement, endurance, and heterosexuality. Rapists scored lower on autonomy, dominance, and aggression. As compared with normal males, rapists thus tend to be less aggressive, less independent and self-motivated, and less self-assured and dominant. Fisher and Rivlin (1971) interpreted their results as consonant with rape as an act of hostility perpetuated by a male who feels weak, inadequate, and dependent. Additionally, Groth and Burgess (1977) studied 107 convicted rapists. They reported that during the attack 16 percent of the rapists became impotent, 3 percent ejaculated prematurely, and 15 percent were unable to ejaculate or experienced great difficulty with ejaculation. Their report was supported by a follow-up survey of 92 women hospitalized after a sexual assault, nearly half of whom had no intervaginal sperm, including some women who had been gang raped (Groth & Burgess, 1977).

Compared to any other type of sex offender, the overall personality structure of rapists is the closest to that of a non-offender. However, differences in impulse control and manifest aggression are noted between rapists and controls (Amir, 1971). The lack of felt mutuality in sexual conduct, disassociation of sexuality from love, and tendencies toward objectification of women are significant factors in the personality profiles of rapists. Indeed, the application of force may come to have definite sexual arousal potential for the rapist. Hodgens et al. (1972) explored the attitudes of convicted rapists in Victoria. Sexual intercourse indicated that it was viewed solely as a physical act; females were seen to have no reason to refuse intercourse except due to fear of pregnancy. The act of forced intercourse was accepted as harmless as long as the victim was not "knocked around."

Other characteristics of rapists and rape behaviors have been noted by a variety of investigators. Cohen, Garofalo and Boucher (1971) distinguished among the differing motivations to rape. They noted that rape may involve expression of sexual, aggressive, or sex-aggressive behaviors. The sex-aggressive classification included instances of fused expression of sexual and aggressive drives into an act of sadism. Of the 133 convicted rapists and 92 rape victims studied by Groth, Burgess and Holmstrom (1977), none was motivated by predominantly sexual needs. All of the offenses could be classified as either a power rape or an anger rape. The power rape is committed by a person who seeks control over the victim through the use of intimidation with a weapon, physical force, or threat of bodily harm. The anger rapist seeks the rape experience as a vehicle to express anger, rage, contempt, and hatred toward his victim by sexual assault, humiliation, degradation, and other forms of violence. In one experiment rapists could be experimentally separated from non-rapist subjects in that rapists developed penile erections to auditory stimuli of rape descriptions (Abel, Barlow, Blanchard & Guild, 1977). One theoretical explanation of the etiology of rape states that the man who commits rape comes from a family showing great parental friction, with a violent father abusing his wife (Bromberg, 1965). The man-child learns by example that women may be safely abused and are a proper target for assault. The "feminine" personality trait of passivity represents the greatest threat to perceived masculinity. Bromberg (1965) states that studies have revealed a "substratum of unconscious passivity" hidden behind an exaggerated or pretended masculinity in persons convicted of violent crime. Thus, the fear of personal femininity compels the rapist to attack that which is most feared in



himself. This motivation, with an available vulnerable female target, propels exhibition of the behaviors either modeled by the abusive father figure or approved as masculine by the prevailing culture.

#### D. Enculturation of Patterns of Violence

Prisons may add to the causes of rape without contributing to a solution, particularly when psychological services are unavailable. Prison culture is an exaggeration of the general culture, with an emphasis on male sex roles, violence, and relations based on power (McDuff, Pernel & Saunders, 1977). Without therapeutic intervention, the convicted rapist is placed in a situation which aggravates and intensifies those very processes which contribute to the original rape syndrome. Recidivism rates for rapists after simple incarceration are high, stabilizing at 35 percent in one reporting, while recidivism varied between 6 and 35 percent under various treatment programs (Frisbie & Dondis, 1965; Kozol, Boucher & Garofalo, 1972). The recidivism rate for rape and aggressive sexual assault for the Victoria sample was 16 percent (Hodgens et al., 1972). Thus, simple removal from society through incarceration without treatment does not diminish the rapist's potential to seek repetitional rape gratifications. It may only further the enculturation of patterns of violence in persons already prone to violent, aggressive self-expression.

An additional factor in the enculturation of patterns of violence is the contributory effect of media exposure. A study of women and minorities in television performed by the U.S. Commission on Civil Rights was particularly revealing in the patterns of crime, violence, and victimization. Throughout the six years sampled, females were the most frequent

victims of violence (Fleming, 1977). Nonwhite females were more likely than any other group to be portrayed as victims rather than perpetrators of violence, and white females were the next most victimized group. White male characters were proportionately the most frequent inflictors of pain (18%), followed by nonwhite male groups (15.4%). Females inflicted pain on others much more rarely (7% of white females, 3.1% of nonwhite females). A similar pattern existed for killing. Males killed and females were killed; no nonwhite female killed and only 1 percent of white females were portrayed as killers. Thus, for the years from 1969 to 1974 inclusive, the social patterning of violence in the media was predominantly with male perpetrators and female victims. A similar pattern has been observed in society, according to the FBI (Uniform Crime Reports, 1973). In 1973, women accounted for 22 percent of the victims of committed homicides, and for 15 percent of those arrested for murder. For sex offenses other than rape or prostitution, only one in ten arrests are of women.

American media provide much cultural support to violent solutions for personal and interpersonal problems, national and international problems. The trend toward victimization of the weaker person or nation is occasionally rejected as a valid solution. Serious consideration of the problem of interpersonal violence must focus upon not only the aggressors but also the aggressed.

The fear of being raped--which every woman knows--has made women, collectively, the largest group of prisoners in America, sentenced to a lifelong deprivation of liberty by the frightening reality of sexual assault and by a sexist society and criminal justice system which require that the victim first establish her innocence before the rapist can be convicted (Robin, 1977, p. 136).

### E. Summary

In summary, the two major psychological positions concerning rape are derived from either the Freudian view of the humanistic/feminist view. Freud's conceptualization included postulation of a masochistic female sexuality which readily accepts sexual assault from a male. Sexuality relies on fused sexual and aggressive energies in Freudian thought. The opposing position of humanism/feminism views rape as a means of female oppression. The feminist position emphasizes the importance of such factors as encouragement of male aggressivity, patriarchy, heterosexuality, and the cultural view of women as the property of males as contributing elements in the pattern of rape in the United States.

Studies of rapists indicate that they differ from controls in impulse control and manifest aggression. Rapists showed sexual arousal to auditory rape descriptions and sadomasochistic material. Their sexuality is disassociated from love considerations, and may be used as a vehicle to convey hostility and interpersonal control for women.

Rape is one symptom of the enculturation of patterns of violence. Prison culture encourages violence and relationships based on power, and is unable to rehabilitate rapists without extensive therapeutic intervention. The media portray women and minorities as frequent victims of violence, perpetrated usually by white males. In some groups, violent solutions to personal and interpersonal problems are increasingly being rejected as culturally valid, and a convenient index of change is the rape statistic.

## CHAPTER IV

### ATTITUDES REGARDING RAPE

#### A. The Public

A wide range of attitudes exists in the public concerning rape. These attitudes are often conflicting and highly emotional in nature. Yet, the attitudes held by the populace find their way eventually into legal codification. An example of the conflicted positions of liberal and conservative stances may be shown in an examination of resolutions submitted to the 1977 Oklahoma International Women's Year Conference (Darnell, Note 1). By way of explanation, the conference split into two factions, symbolized as differing stances on the Equal Rights Amendment (ERA). The ERA was not the only difference of opinion between the groups, however. Both groups were presented with resolutions derived from prior workshops. Thus, each group was presented with identical issues; resolutions of those issues proceeded very differently. Some of the resolutions from the workshop on rape were acceptable to both groups. Synopses of these mutually acceptable resolutions are presented as follows:

1. Rape may be defined as an act of violence or force involving a sexual act in any degree. Both factions agreed to broadening the definition of rape to include any form of sexual assault.

2. Additional training from qualified personnel should be obtained for persons who must deal with the victims of sexual assault.

3. Law enforcement agencies should employ a same-sex person to counsel with victims of sexual assault.

The conservative body postponed, and the liberal caucus passed, a resolution lowering the age of statutory consent to 14 years.

The following resolutions were passed by the liberals' caucus and defeated in the conservative body:

1. Recognition that either partner of a marriage may be victim of rape;
2. Provision of medical and legal assistance on a sliding scale and free evidence gathering in prosecution;
3. Omission of the Hale instruction\* in the courtroom;
4. Revision of rape laws to provide for graduated degrees of the crime to apply to assault upon or by both sexes;
5. Redefinition of the crime so that victims are under no greater legal handicap than victims of other crimes.

A major point from these proceedings is that both liberals and conservatives were accepting a new definition of rape. Both groups recognized rape as a crime involving any sexual act, not just the act of vaginal penetration. However, the conservative group was not interested in extending the rape law to cover marriage partners or to revitalize court procedures in the trial of rape cases.

The National Women's Conference was held in Houston, Texas, November 18-21, 1977. The rape resolution passed by the august body

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\*Some jurisdictions require the judge to instruct the jury immediately before deliberation in the manner prescribed by Lord Chief Justice Matthew Hale (1847): "Rape is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent" (p. 634).

called for modification of the current legal requirements as follows

("To Form a More Perfect Union": Justice for American Women, 1978):

Federal, state, and local governments should revise their criminal codes and case laws dealing with rape and related offenses to provide for graduated degrees of the crime with graduated penalties depending on the amount of force or coercion occurring with the activity; to apply to assault by or upon both sexes, including spouses of victims; to include all types of sexual assault against adults, including oral and anal contact and use of objects; to enlarge beyond traditional common law concepts the circumstances under which the act will be considered to have occurred without the victim's consent; to specify that the past sexual conduct of the victim cannot be introduced (p. 598).

Women's groups are not the only ones concerned with the rape issue. Recently, many differing views concerning rape as a controversial issue have been aired. Sellin and Wolfgang (1964) found rape to be judged second only to murder in seriousness. A wide range of attitudes toward rape exists, and these attitudes reflect the influences of many other factors such as liberal-conservative stances, early socialization effects, sex-role identifications, and personal experiences. As these factors change, attitudes toward rape and rape victims also change.

Recently, Louis Harris (1977) surveyed 1,536 adults nationwide concerning rape and the law. Seventy-one percent of the sample rejected the idea that judicial decisions should excuse rape defendants because women often provoke men to commit sexual acts by the way they dress and act. A 51 percent majority felt that those judges responsible for the pronouncement should be relieved of the duties of office. An 87 percent majority felt that rapists are sick and perverted males who commit crimes against women from which women often cannot fully recover. A 72 percent majority felt that rape of a woman is a violent crime and cannot be justified by suggesting that women who are raped brought it

on with the way they dress. A 57 percent majority felt that the attitude of male judges, who released men charged with rape on the grounds that women spur the men on to rape them, indicates those judges have a deep bias and prejudice against women. A sex difference was noted on the previous item, with women endorsing it considerably more often than did men. By a 64 percent margin, people rejected the idea that in many cases of rape it was probably the woman who led the man on in the first place.

The liberalization of public attitudes concerning rape has been profound. The woman, however, is still to some extent held responsible if she is raped. Again, according to Harris (1977), a 79 percent majority still believe that any woman who hitchhikes alone can expect to run the risk of having a man driving a car try to have sex with her or even rape her. A majority of 68 percent felt that some women carry on sexually and then get scared and unfairly call it rape. A 49 percent plurality felt that with women appearing in advertisements in newspapers only scantily clad, with stories about prostitutes in the media, with bars that have nude dancing, and women dressing in revealing clothing, it is no wonder men think women want to carry on sexually. Each of the preceding statements in some measure shifts the responsibility for rape back to the victim. A female hitchhiker is still considered fair game by the public majority. She is denied the right of mobility free from sexual harassment solely on the basis of her sexual "availability." The suspicious attitude regarding unfair charges of rape is still prevalent. In light of the high statistics of non-reporting of committed rapes, an excessive fear of being unjustly accused seems excessively paranoid. And, regardless of the number of scantily-clad women in advertising,

the idea that a woman may want to "carry on sexually" does not relate to the use of forceful rape to attain that end. The liberalization of attitudes concerning rape is only partially accomplished.

#### B. Jurors' and Judges' Attitudes

Juries may dismiss rape charges on very nonlegal grounds. The presumptions and attitudes that a juror holds about rape may be the deciding factor during balloting. A juror may differentially evaluate the effect of the complainant's emotional involvement according to prior attitudes. Rather than recognizing that much emotion can be generated by a criminal violation of one's own body, a juror may be more comfortable with assumptions of additional hidden motivating factors such as revenge or view the emotionality as "staged" for juror effect. Whatever the case, the juror is attributing nonrelevant characteristics or motivations to the victim which will prejudice the evaluation of her testimony. Attitudes denying the possibility of forcible rape, affirming that "any raped female must have asked for it," likewise prejudice a just ballot. The attitudes of the judge and jurors concerning rape is a major source of uncontrolled variability in the judicial proceeding.

Jurors are screened by attorneys during the voir dire proceeding. The attorney is interested in getting a jury which will be sympathetic to his/her client. Perceived juror attitudes may be a deciding factor in the exercise of peremptory challenges in order to shape jury composition. For example, in three Florida counties, defense attorneys try to keep white women off juries for rape cases due to the belief that Southern white women are predisposed to convict for rape. Some prosecutors try to screen out black women since rape is so pervasive in the black



community that the black women may not consider it a crime (Astor, 1974). Some district attorneys do not want women on rape juries at all. They feel that women are more lenient than men in rape cases (Taylor, Note 6). Women are more concerned with the behavior of the victim than are men (Krulewitz, 1977). Women jurors are as concerned with the chastity of the victim as are men. Rape is a transgression against chastity, according to the popular view. What follows logically from this is that an unchaste woman cannot be raped, i.e., she cannot lose what she does not have. The female juror may be willing to blame the victim for the rape. If the victim is held responsible, the other woman can continue to believe that "proper" behavior will protect them from a similar victimization (Melani & Fodaski, 1974).

Other attitudes regarding rape were tapped by Davis et al. (1975) in mock voir dire proceedings. Their subjects felt that rape was a difficult crime to commit. A significant sex effect was associated with the difficulty question, with males judging rape more difficult to commit than did females. Peripherally, their subjects felt that most rape charges are strongly justified, an attitude which is hard to reconcile with the low conviction rates obtained in rape trials. These subjects may have unwittingly tapped a contributory factor in the low conviction rate when a majority revealed that they felt the penalty for rape should be ten years or less. In many jurisdictions, such as the state of Oklahoma (Oklahoma Statutes, 1977), death or life sentences may still be imposed.

Juries tend not to convict in rape prosecutions, even if corroboration is present (Kalven & Zeisel, 1966). The jury does not limit itself to the issue of consent, as does the law. Of particular importance is

the victim's prior conduct. Any precipitatory or provocative behavior on her part will probably result in the dismissal of the charge. Kalven and Zeisel (1966) based that conclusion on a scan of 108 rape cases in which jury bias was evident in cases involving "assumption of risk" by the victim. Juries given the option to convict the accused on a lesser charge preferred the lesser charge. If confronted with a matter of conviction for first-degree rape or acquittal, however, juries prefer to acquit the defendant. In aggravated rape, or rape involving overt brutality, juries are more willing to convict the assailant. Judges disagreed with juror verdicts only 12 percent of the time in aggravated rape cases, as compared with a 60 percent disagreement rate with jury acquittal in non-aggravated rape cases (Kalven & Zeisel, 1966).

Krulowitz (1977) indicates that profeminist women are not swayed by the amount of force used in their amount of certainty that a rape was committed. Males' response patterns resembled that of profeminist women. Women who ascribed to traditional sex roles, however, exhibited a direct relation between amount of force used and certainty of rape commission. Judges as well as juries are operating under the attitudinal structures formed prior to the major cultural shifts following the women's movement. Women now have the need to work outside the home and need the mobility free of sexual harassment that has been denied. Not all judges ascribe to that view, as evidenced by Justice Lynn D. Compton as quoted by Ferrell in New West Magazine of August 29, 1977:

. . . if a woman hitchhikes alone "it would be reasonable" for the man who picks her up "to believe that the female would consent to sexual relations"; by standing in need of a ride, she "advises all who pass that she is willing to enter the vehicle with anyone who stops," and that she "has less concern for the consequences than the average female" (p. 36).

Judge Arch Simonson (Pinsley, 1977) was recalled following a statement that the rape of a 15 year old girl was a "normal reaction" to sexual permissiveness within the society. Likewise, a Wisconsin judge gave a 16 year old girl a scolding because she had worn a sweat shirt and jeans to school and therefore had "enticed" the three boys who raped her in a stairwell into "doing what comes naturally" (Ferrell, 1977). Juries and judges may exhibit such attitudes within a rape trial proceeding and thereby automatically bias the trial outcome.

The impact of the judge's attitude on the trial proceeding assumes importance primarily in relation to the kinds of evidence he/she rules as admissible. The judge controls the amount of admissible evidence relating to the victim's prior sexual conduct. An unsympathetic judge can allow prolonged and intensive examination of the victim's reputation for chastity, which often assumes excessive prejudicial and inflammatory importance to the jury. A more sympathetic judge may limit the introduction of such evidence.

### C. Penalties

Judges tend to separate rape cases into three different categories with varying amounts of accorded credibility (Bohmer, 1974). One category is the "genuine victim" involving primarily stranger-perpetrated rapes. This type tends to evoke a more sympathetic treatment from the judge for the prosecutrix. Sentencing of the stranger-assailant upon conviction tends to be harsh. The second category of "consensual intercourse" is rape according to the law, yet judges tend to treat it in a more cavalier fashion. They may view the complainant as in some sense implicated in the crime. Judges describe this situation as "friendly

rape," "felonious gallantry," and "assault with failure to please" (Bohmer, 1974, p. 305). These cases tend to show few convictions and mild penalties. The third category included "female vindictiveness" cases. Judges tended to believe that the intercourse was consensual or that the alleged rape did not occur at all.

The judges' attitudes also affect the length and harshness of sentencing convicted rapists. Judges in Australia tend to treat extensive injury to the victim and the prior moral conduct of the victim as important factors to consider in sentencing the assailant (Barber, 1975). Less severe sentences were administered to assailants who raped single, non-virgin women, or women of other than good moral conduct. Juries share the judge's concern with the moral behavior of the victim. Consistently, lesser sentences are imposed on the assailants of single, divorced, and non-virgin women.

An investigation concerning appropriate penalties for rape was conducted by Scroggs (1976). The dimensions of victim pregnancy, amount of provocation, and resistance were varied in experimental scenarios. The following results were obtained. Older subjects gave much higher penalties if the victim was impregnated than did younger subjects. No sex differences regarding provocation by the victim were obtained. Provocation was regarded similarly by both male and female simulated judges, with both sexes assigning lower penalties for high provocation conditions. Large sex differences were obtained when victim resistance was considered. Males gave rapists lenient penalties when the victim did not resist, while females imposed more severe penalties under those conditions. Evidently, males assume that nonresistance constitutes implied consent, whereas females view it as notification of helplessness

and inappropriateness as a potential victim, Scroggs (1976) theorized. Given that over 50 percent of the victims studied by Amir (1971) exhibited submissive behavior in the face of rape, this may be a relevant factor in accounting for the low conviction rate in rape trials.

Scroggs (1976) obtained these differences in attitudes in simulated paradigms of both rape and robbery. Differences in patterns of responses were to some degree age-related as well as sex-related. The general conclusion seems to be that with a predominately older male jury, a non-resisting victim will have difficulty convincing enough jurors to obtain a conviction.

Smith et al. (1976) varied the dimensions of acquaintance and social role in an investigation of attributions of responsibility to a rape victim. They found that victims who were acquainted with their assailants were attributed varying amounts of responsibility depending on their social role. In other words, when acquaintance was a common factor, the nude dancer was attributed the most responsibility and the Catholic nun was attributed the least responsibility for becoming a rape victim. Acquainted victims were attributed more responsibility than were unacquainted victims. Two bases for responsibility were indicated. One was amount of provocative behavior and the other was carelessness. The specific pattern indicated by Smith et al. (1976) was as follows. In the acquainted condition, the assailant and the victim were seen as sharing responsibility for the rape. The same pattern did not hold for the unacquainted condition. Subjects could resolve the responsibility dilemma by attributing responsibility to the assailant or to the victim. Subjects resolved it in the direction of attributing more responsibility to the victim, showing no differences in amount of responsibility to the

assailant regardless of acquainted or unacquainted variables. Sex differences were obtained. Male subjects rated the rape victim as more careless and more likely to have done something to provoke the rape regardless of the victim's social role as nude dancer, social worker, or nun. Females identified more strongly with the victim and prescribed more severe punishment for the assailant than did the male subjects. Jones and Aronson (1973) found that more severe penalties will be assigned a rapist when his victim is married or virginal rather than divorced. The severest penalties were reserved for rapists of married females. Offenders whose victims are socially respectable are sentenced to longer terms of imprisonment, according to Landy and Aronson (1969). Racial factors may play a significant role in assignment of penalties. Wolfgang and Reidel (1973) reported that black males convicted of rape of a white female had an execution rate 18 times greater than any other defendant and victim racial combination. Simulation jurors' attitudes concerning rape may be quite representative of the attitudes held by actual jurors. The effect of attitudes within the judicial process takes on added importance when the rape trial is by jury. The jury becomes the final determiner of evidence and sometimes of penalties. Juror attitudes on rape may support or deny individual justice under the law.

#### D. Summary

A wide range of attitudes exists concerning rape and these attitudes eventually modify legal codes. Both liberal and conservative women's groups have begun to call for a new definition of rape, recognizing rape

as a crime involving any sexual act which is actualized without the consent of the partners.

The attitudes of judges and jurors have more immediately pressing significance since they affect the outcome of criminal trials. Attitudes affect the determination of witness credibility, the eventual findings, and the length and harshness of sentence. The attitudes of the judge and jurors is a major source of uncontrolled variability in the justice proceeding.

## CHAPTER V

### LEGAL REQUIREMENTS FOR ESTABLISHMENT OF THE CRIME OF RAPE

The legal definition of rape has generally been forceful unlawful carnal knowledge of a woman by a man who is not her husband, accomplished against her will or without her consent. Oklahoma law defines rape as follows:

Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of 16 years.
2. Where the female is over the age of 16 years and under the age of 18, and of previous chaste or virtuous character.
3. Where she is incapable through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.
4. Where she resists but her resistance is overcome by force and violence.
5. Where she is prevented from resistance by threats of immediate and great bodily harm, accompanied by apparent power of execution.
6. Where she is prevented from resisting by an intoxicating narcotic, or anesthetic agent, administered by or with the privity of the accused.
7. Where she is at the time unconscious of the nature of the act and this is known to the accused.
8. Where she submits under the belief that the person committing the act is her husband, and this belief is induced by artifice, pretense and concealment practiced by the accused, or by the accused in collusion with her husband.



with the intent to induce such belief. And in all cases of collusion between the accused and the husband of the female, to accomplish such act, both the husband and the accused shall be deemed guilty of rape (Oklahoma Statutes, 1971).

The four necessary components as stated above can be summarized as follows: the victim is female; nonconsent is clearly exhibited; the victim is overwhelmed by force or threat of harm; and the male perpetrator achieves forcible vaginal penetration.

A much narrower working definition of rape is used by the public and the police. The tendency of the police is to view forced sex as rape only if an immediately reported rape involves a violent stranger who leaves the evidence that an attack took place over the woman's active resistance (Weis & Borges, 1973). Police prefer to investigate the assault of victims who are clearly chaste or without fault. Rape complaints that are considered barely credible by police are filed as "investigation of persons" (Brownmiller, 1975); when the victim is a "suitable victim" the rape may be listed as a "no human involved" investigation (Ellison, Note 3). Women who belong to a racial minority or are of low socio-economic status or of questionable chastity are the groups held to be "suitable victims." Since a large area is left to police discretion, a large percentage of rape complaints are dismissed as "unfounded claims" solely on the basis of victim characteristics.

The officers to whom a rape is reported should bear a special responsibility to the victim. The victim of a sexual assault, unlike victims of other forms of assault or violation, must cope with the social conditioning against open discussion of sexuality and sexual acts as well as internal fears and guilts supported by society through incorrect beliefs about rape. If a woman is raped, the public view is that she must be "bad" and probably she "asked for it." She may be guilty

of an error in logistics or guilty of error in becoming vulnerable to an assailant, yet no woman asks to be raped. Her consent alone would prevent any requested act from satisfying the concept and definition of rape. For instance, women and men may consent to sadomasochistic sexual practices in which violence and bodily harm will occur, yet rape has not occurred. Mutual consent precludes the possibility of violation of one partner. Yet the victim of sexual assault is not accorded the validity of her complaint, which in turn affects the potential outcome of the complaint.

The negative and suspicious attitude exhibited by some police officers has the effect of discouraging the victim from pursuing charges against her assailant. Even if she has reported the rape, she may be dissuaded from filing charges or may fail to provide information vital to investigation of the complaint. A study of the sex crime analysis unit of the New York Police Department revealed that 66.5 percent of dismissed cases were caused by complaint failure of the type noted above (Keefe & O'Reilly, 1975). The assumption is made that victims fail to press complaints because of the treatment they receive from the legal authorities. The most common victim complaints concerning treatment by police officers were: (1) inappropriate questioning of a personal nature; (2) judgmental attitudes regarding the victim's physical appearance, attire, or actions which are regarded as precipitating the sex crime; (3) rudeness and aggressiveness; (4) unsympathetic attitudes; and (5) failure to clarify procedures in the court, hospital and police station. After positive attitude training, an increase of 24.8 percent arrests for forcible rape was effected, due largely to better investigations resulting from greater complaint cooperation.

There are problems with the public attitudes regarding rape. Generally, the average citizen is ignorant concerning the nature of rape. From a questionnaire administered to college students, Schultz and De Savage (1975) indicated that 41 percent of all females and 55 percent of all males surveyed incorrectly defined legal rape. Of added importance is that 12 percent of a non-aggressed female group (those who had never experienced an actual or attempted rape) stated that there is no such thing as forcible rape. This belief would be an automatic prejudicial element which could affect verdicts in jury trials of rape cases.

Various qualifications of charges of rape are in force in different jurisdictions. A review source, Rape, by Silberstang (1972) was most helpful in compilation of the legal requirements concerning rape. Complete legal references may be found in the appended legal reference section.

#### A. Statutory Rape

The legal system recognizes that the crime of common-law rape may be committed on any female. If she is below the statutory age limit for knowledgeable consent, her assailant may be prosecuted for statutory rape rather than forcible rape. Some states require evidence of previous chastity of the victim even in statutory rape proceedings (Hickman vs. State; State vs. Walker; State vs. Higgenbotham). The complexity arises in that statutory rape provisions remove the possibility of consent as a defense. In the face of a requirement for prior chastity, however, the victim's history of chastity becomes challengable in court. The importance of the chastity of the victim is in relation to the probability of consent. In consent cases of rape, if the prosecutrix is near the legal

age of consent, evidence of previous unchastity may be used as a defense (Dallas vs. State). If the issue of consent is not raised, prior unchastity is not a defense to a charge of forcible rape (Roper vs. State). Prior chastity may be presumed until disproven in some courts (Carpenter vs. Commonwealth; Commonwealth vs. Bonomo), while in others chastity must be established by the state as would any other element of a case (Dallas vs. State; State vs. Kelly; Wright vs. State).

#### B. Forcible Rape

For non-statutory rape proceedings, prior unchaste conduct by the prosecutrix is no defense. Unchaste conduct does have an effect on the case, particularly when it is a jury proceeding. Jury members tend to weigh evidence of prior unchaste conduct by the victim in excess of its expected importance. Regardless of the charge of law, conviction of a rapist who assaults an unchaste woman is virtually impossible by a jury trial (Barber, 1975). Legally, introduction of evidence of prior specific acts of immorality involving the prosecutrix is inadmissible (People vs. Collins; State vs. Kain; State vs. Chapman; State vs. Allen). Evidence of prior unchastity is generally of the form of proof that the prosecutrix had intercourse with another man or men (State vs. Wood; People vs. Merrill; Holland vs. Commonwealth; People vs. Hornbeck) in order to imply that the prosecutrix would not be as likely to resist the defendant's advances as would a more chaste woman (Lee vs. State; Packineau vs. U.S.).

If the defense of consent is offered, the prosecutrix's general reputation for immorality and unchastity prior to the alleged rape may be introduced (Holland vs. Commonwealth; People vs. Eilers; People vs.

Allen; State vs. Franklin; People vs. Collins; Waller vs. State; State vs. Taylor). Clarification of this rule in People vs. Whitfield stated that evidence relating to prior chastity and specific acts with the defendant was admissible. The court held that inadmissible evidence included sexual activities of the defendant with third persons, specific instances of the victim's sexual conduct, and opinion and reputation of the victim's sexual conduct. The practice of admitting the sexual history of the prosecutrix as relevant testimony has been intended to reflect on her probability of consent in a given situation. Evidence of prior recent unchaste acts may give rise to an inference of consent but not to a presumption of law of consent (People vs. Shape). Any woman or female child may refuse consent and become the victim of rape. Legal precedent has been set to recognize that any woman, including "unchaste" women and prostitutes, may become the victims of this crime of sexual aggression (State vs. Borde; Humphreys vs. State; Harper vs. State; Haynes vs. State). No matter what she may have done in the past, a woman does not lose her right of choice in each sexual encounter, to refuse consent or to consent as an act of her own will.

One of the suggestions for reform of the rape laws suggests that rape as a special category should be eliminated (Baril & Couchman, 1976). Since the rape statutes specify that female sexual organs are violated, those statutes are redundant. Existing sexual abuse statutes cover the violation of sexual organs but without specifying the gender violated. Rape statutes specifying a female victim thus composes a redundant category of violation. Instead of protecting females as persons, rape statutes serve as a legal chastity belt to control females as the property of males. As seen in other discussions, the females who cannot find

legal redress for their victimization under the current situation because they are in some way held to be "acceptable victims" would be able to seek redress under a system in which the violation rather than the victim's characteristics was the issue.

Practically speaking, not all victims of sexual aggression are female. Males are also subject to rape, yet their assailants are charged with violation of some type of sodomy or illegal carnal knowledge statute (Brinson vs. State). A survey of college males indicated that 20 percent reported at least one incident of forcible rape; an additional 10 percent had experienced a forcible sodomy attempt (Schultz & De Savage, 1975). Sexual assault appears to be a more pervasive problem than has been recognized. Focusing only on male assailants and female victims obscures the fact that violent sexual assault may happen to anyone.

Rape has been argued to be an act perpetrated by one sex on another sex where pregnancy can occur, while carnal knowledge encompasses experiences of another person's body (Washington vs. State) and could apply to either sex. Forcible penetration of a man's bodily orifice against his will by the sexual organ of another man constitutes forcible carnal knowledge (Brinson vs. State). Standards similar to those used in rape cases are applied to sodomy charges with the exception of consent. The argument that no criminal offense arises from consensual acts may have some validity, yet most states are unconcerned with the consent in the sodomy prosecutions. Sodomy is an act deemed offensive in the state law, not dependent on the reception or willingness of the partner. Without a legal presumption of even the likelihood of consent, force may be more easily proven. Even when the testimony of the complaining witness lacked credibility, a sodomy conviction was upheld due to the presence

of bruises on the witness's neck and back after the incident (People vs. Mules). This constitutes a less stringent standard than that applied in rape prosecutions, as may be shown by the corroboration requirements for rape of a female victim.

Males may be violated by females as well as by other males. Rape crisis centers are now receiving legitimate calls from males that have been violently sexually assaulted by one or more females (Dolittle, 1977). The situation may be slightly easier to examine given a female assailant and a male victim. Due to the biology inherent in the situation, those acts intended to humiliate and degrade the victim may be partially distinguished from those acts aimed at deriving sexual pleasure from the victim. With a male assailant and a female victim, often the two factors are inseparably merged. Yet the end result is the same in both cases. The victim has been victimized.

At one point in time, when the concept that women could rape men was revolutionary, theorists were inclined to distinguish the result of the violation on a sex basis. In a footnote, Herschberger (1948, p. 20) discusses the following: "If we regard ordinary rape as a form of 'intervaginal masturbation,' woman's 'rape' of man would be 'extravaginal masturbation.' While she could not effect intromission, she could effect orgasm." In the text, she continues the thought: "While a woman might 'rape' a man in a highly mechanical fashion, though no less mechanical a fashion than the male type of assault, she could not humiliate him thereby."

Personal testimony from males who have been raped by females or by other males tends to refute the idea that sexual assault is not humiliating to the male victim. In one rape of a man by three women, the

victim was forced at knife point to anal intercourse with a wine bottle followed by forced cunnilingus. At no point in the proceedings did he report responding with pleasurable sexual arousal. His responses were remarkably similar to that of female victims, including shame, guilt, rage, humiliation, fearfulness, and self-doubt (Dolittle, Note 2).

Prosecution for offenses such as these is rare. A man who charges a woman with rape faces a virtually impossible task. Most rape and sodomy statutes only cover sexual assault with a male as principle. The complainant must face social abuse as to his "loss of masculinity" and his complaint probably will be treated as an envious joke. Like many raped women, the victim may only want to forget the entire episode. The experience of rape is demoralizing, regardless of the sex of the assailant or victim.

In summary, forcible rape statutes differ in the specified legal requirements. In non-statutory rape proceedings, prior unchaste conduct by the victim may give rise to an inference of consent in the present trial situation.

Existing rape statutes specify that the victim must be female. Males are also raped, yet their assailants are charged with violation of some type of sodomy, illegal carnal knowledge, or sexual abuse statute. Rape statutes could be reformed to include both male and female victims and male and female assailants in order to have uniformity of protection and evidentiary requirements.

### C. Nonconsent

The characteristic which distinguishes rape from intercourse is the element of nonconsent. If one partner is unwilling to participate in



any sexual act and communicates that unwillingness, the other partner is obligated to honor that assertion. If he/she does not do so, it can be considered rape. The requirement to prove that the victim did not consent to the perpetration of the crime is a unique requirement in charges of rape. It is the only crime in which the victim must prove that she did not in any way, even subconsciously, consent to be victimized.

Two elements are of legal importance. First, the initial unwillingness of one partner to perform some sexual act must exist; legally, to exhibit nonconsent to the act of vaginal penetration. Second, subjective knowledge of unwillingness is not legally significant unless nonconsent is communicated to the partner. After the communication the partner chooses for himself, as an exercise of will, whether or not to heed the assertion. In a relationship of trust and mutuality, the assertion will be honored regardless of the influence of factors such as the relative strengths of the two, the amount and kind of vulnerability, the intrapsychic meaning of the specific act, or other situational or personal variables. In an objectifying relationship, wherein one partner is accorded less innate value than the other, these factors may assume more importance than the "mere" objection of one partner. With the right combination of circumstance coupled with the inclination to violate another's rights to refuse consent, the situation in which rape may occur has been created.

Legally, nonconsent must satisfy several criteria. Subjective unwillingness alone is insufficient to establish nonconsent. Resistance is a sign of nonconsent (Killingsworth vs. State). Active resistance is the strongest affirmation of nonconsent for a jury. The jury decides a woman's state of mind mainly from her behavior in establishing nonconsent.

Physical resistance to the utmost is not required in cases where further resistance would be foolhardy or would endanger the woman. The question of how much resistance for how long must be resolved by each individual victim. Courts and juries decide the nature of appropriate resistance after the fact and in a situation in which the danger is no longer present. Guidelines for resistance vary across time and jurisdictions. Some recent rulings have modified the older requirement of utmost, unceasing resistance (Prokop vs. State; State vs. Schmeier). Most jurisdictions now hold that the amount of resistance must be proportional to the situation, including such factors as relative strength of the victim and assailant and the futility of persistence in resistance (Harris vs. State). The assailant's threats of physical harm to the victim may also suffice to establish nonconsent.

The law does not require useless or impossible resistance and recognizes that overcoming the victim's will to resist by force is possible. For instance, in one case a black eye and a bloody nose received prior to intercourse were sufficient to dissuade the victim from an excess of further resistance (Dumar vs. State). Presence of multiple attackers severely mitigates the amount of required resistance.

The courts have held that continued resistance to attempted rape is not required to establish nonconsent (State vs. Glidden), and that a rape victim need not continue resistance where such resistance would be futile (People vs. Sullivan). An armed assailant is one such example of a situation in which further resistance becomes futile. When a victim's life is endangered by an assailant armed with a deadly weapon, such as a knife (People vs. Garriott), or when the victim was forced to comply at gunpoint (People vs. Browder), further resistance has been

held to be justifiably futile. Occasionally, a woman is successful in frustrating the attack through her resistance. Her attacker may then be convicted of attempted rape (People vs. Hamil). The threat or danger to the woman need not even be objectively present in certain cases. For example, in one instance resistance was not required due to the defendant's use of a real-looking water pistol (Brown vs. State). The implication of threat was sufficient to justify cessation of resistance. A similar circumstance occurs when a rape is committed with the aid of an unloaded gun.

The victim need not resist when certain other factors are involved. One conviction for rape was upheld even though there was no evidence of outcry, no corroboration, and no evidence of use of force. According to testimony, the assailant covered the victim's face and threatened to kill her baby (People vs. Nichols). Yet, the victim is constrained to use as resistance any advantage or opportunity which is presented. One conviction was reversed due to the victim's failure to cry out as she was forced across a busy street during daylight (People vs. Anderson).

One difficulty with a case in which an armed assailant causes the woman to cease active resistance is that the rape has a higher likelihood of being disbelieved. Without visible marks of injury incurred during resistance, many police officers are reluctant to investigate the charge. If the assailant succeeds in disposing of the weapon prior to capture, nonconsent and the use of force are exceedingly difficult to prove.

If consent is given any time prior to penetration, no rape has been legally committed (People vs. De Frates; Hazel vs. State; Rogers vs. State). Yet, consent must be distinguished from submission. Force or

threat producing fear beyond the capacity of the victim to endure may produce submission. Any consent by the victim which is induced by fear of violence or harm is not legal consent (State vs. Carthens). Often the jury must decide whether the victim gave a last-minute consent or merely submitted in the face of superior force. If the woman gives her consent after the assault but before penetration, her assailant may be convicted of assault with intent to ravish (Copeland vs. State). The consent given before penetration annuls the possibility of conviction for forcible rape. Once penetration has been accomplished, the time for the question of consent has passed. It is not legally possible to consent after the act of penetration.

Often legal definitions are not synonymous with cultural prescriptions. Communication of consent or nonconsent is difficult to establish verbally and near impossible non-verbally. Sex differences in methods of communication of consent compound the situation. College students, particularly females but also the males, indicate that the lack of resistance to increasing degrees of sexually intimate play signifies consent (Schultz and De Savage, 1975). Other popular cues for consent included a clear verbal consent and, particularly for the males, the behavioral "consent" of the female reciprocating fondling of the male's erotic zones. Lack of resistance is a passive method for assuming consent. Encouragement of passivity is one of the hallmarks of female socialization. Thus, the socialization process has created a class of rape victims whose precipitating "behavior" is a lack of active resistance. The enculturation of attitudes such as they may help explain why an additional element required in some jurisdictions in rape cases is

active resistance on the part of the victim (People vs. Mazworth; State vs. Dizon; People vs. Smith). Resistance serves to establish both the use of force and nonconsent.

The issue of consent has been decided differently under differing circumstances. For example, in England in April of 1975, the highest court of criminal appeal, the House of Lords, held that if an accused believed that the woman was consenting, whether or not that belief was based on reasonable grounds, he could not be found guilty of rape (Curley, 1976). The ruling is referred to as "the Morgan rule," and, in the press, as the "rapists' charter." The case concerned a man who invited his buddies to share the bed of his wife, without her consent. He had told them that she would enjoy the experience, even though she might simulate resistance. She filed suit against all four of the offending parties. The abolishment of the standard of "reasonableness" constitutes a major departure for English precedent. It is a matter for conjecture as to how the case would have been decided if it had concerned assault, robbery, or any other form of violent crime instead of merely a gang-rape.

In summary, the characteristic which distinguishes rape from intercourse is the element of nonconsent. The nonconsent must be communicated clearly, verbally and behaviorally, to the assailant. Active physical resistance is the clearest affirmation of nonconsent for a jury. Utmost resistance is not required when it is foolhardy or would endanger the woman. Most jurisdictions hold that resistance should be proportional to the situation. Consent must be distinguished from submission on the part of the victim. Force or threat producing fear beyond the capacity

of the victim to endure may produce submission, which is not legal consent. Consent is not legally possible after the act of penetration.

#### D. Force or Threat of Harm

One of the primary ways to establish nonconsent to a sexual act is to determine whether the assailant achieved his purpose through the use of force. It is not a legal requirement that the force be actual physical force. Any form of fear, fright, or coercion through threat or injury is a form of force. Threat with a weapon constitutes the use of force.

Fear of bodily harm can create a situation in which a woman fails to resist her attacker. Some states require that the threat of force is sufficient to cause death or serious bodily injury (State vs. Howard). In other states, reasonable fear of bodily harm (Fields vs. State), a threat of serious bodily harm (State vs. Burns), or fear of violence (State vs. Armstrong) are sufficient to satisfy legal constraints to negate any consent given and constitutes the requisite force for a rape charge. The victim need not trust in the assurances of her assailant. She is under no obligation to believe that he will not in fact penetrate her (People vs. Bissonnette; People vs. Hamil). His verbal assurances are directly countermanded by his use of force in the sexual assault. Failure to achieve penetration does require a charge of attempted rather than forcible rape.

A charge of assault with intent to commit rape includes all of the elements of rape with the exception of consummation (Todd vs. State; Hogue vs. State). One who handles or takes hold of a woman with the intent of forcible carnal knowledge against her will and resistance

(Poole vs. State; State vs. Brown; State vs. Burnette; State vs. LaVine) is guilty of assault with intent to commit rape. The offense is completed when there is assault with intent, regardless of whether penetration or rape is then attempted (Griffin vs. State). Intent is a difficult element to establish legally. Such elements as the preliminary conduct of the assailant are important. In one case the defendant told the victim of his intent, displaced her clothes, and hit her. The court affirmed his conviction of assault with intent even though he had not yet exposed himself (Charles vs. State). Testimony from other sources may aid in establishing intent. Existence of a repeatedly executed plan of operations helps to establish intent to rape rather than an intention to obtain a consensual form of sexual gratification (State vs. Hampton). Frustration in the completion of the act is no defense (Griffin vs. State).

What is the likelihood that a victim of sexual assault will actually come to harm? Astor (1974) reported the following: Philadelphia General Hospital found 36 percent of the victims are assaulted in addition to the rape. In New York, about 50 percent of the women raped are brutally assaulted. Amir (1971) reported that about 30 percent of the victims received brutal beatings or choking, with an additional 50 percent "beaten, not brutally," i.e., not requiring immediate hospitalization. These figures do not include women murdered by their assailants. Determined resistance may end in death for the victim. One out of every ten female murder victims is killed during rape or other sexual assault (Russell & Van de Ven, 1976). The Rape Emergency Assistance League reported in 1974 that one in every ten women raped in San Diego County was murdered and three in every ten were mutilated (Caldwell, 1976). It has been

established that at least 400 rape-murders are committed in the United States every year (Brownmiller, 1975). Fear of death, a very reasonable fear given the statistics, is a powerful factor affecting the amount of offered resistance. Yet even submission is no guarantee of release. The man who panics after the rape, the man who wishes to make detection and capture less likely, and the rarer sadistic sociopath who requires death and/or mutilation of the victim for sexual satisfaction kill regardless of the victim's resistance or lack of resistance. An assailant with no respect for a woman's right to her body may well have little respect for her life. It has been said that the only crime with more longlasting effects than rape is murder (Taylor, Note 6). For many women, the crimes have become inexorably and permanently linked.

In summary, the use of force by the assailant is a primary method for the establishment of nonconsent. Any form of fear, fright, or coercion through threat or injury is a form of force. Percentages of women who are harmed beyond the rape itself range from 21 to 50 percent, not including the numbers of women who are murdered by their assailant. It has been estimated that 400 rape-murders occur each year in the United States.

#### E. Vaginal Penetration

Penetration of the female sex organs by the male sex organ is the legally recognized form of rape (Martine vs. People; People vs. Reynolds; State vs. Kendrick; Jones vs. State; State vs. Hines). Penetration of the vulva, no matter how slight, is required; anal penetration alone will not satisfy a rape charge (State vs. Jackson). Rupture of the hymen is unnecessary since penetration of the labia suffices (Williams



vs. State). Emission without penetration is not rape (Woolridge vs. State). Presence of spermatozoa is not a requirement (Lynch vs. State). Since proof of rape requires proof of vaginal penetration, a physician is normally the proper witness to attest to vaginal penetration (People vs. Kirkdoll).

Husbands cannot be directly charged with rape of their wives (Sharp vs. State, People vs. Pizzura; Duggins vs. State). The marriage contract presumes the consent of the woman to make herself sexually available to her husband. Husbands, however, do rape. A husband cannot be charged unless he violates some provision other than a "mere" accomplished rape of his wife. If he aids and abets another man in the rape of his own wife, he is legally held to be guilty as the perpetrator of the crime (State vs. Martin). Separation will not suffice to remove the privilege of intercourse on demand (Frazier vs. State); instead, a divorce is required to dissolve a wife's legal bondage.

In State vs. Bateman, the court dismissed charges against a husband of anal intercourse and forced fellatio. The court noted that how a couple privately conducted their sexual practices within marriage was constitutionally protected and concluded that fellatio and anal intercourse between private consenting adults were private sexual activities. Consent was not considered to be a defense. Many questions may arise from this ruling. If fellation and anal intercourse are acceptable between consenting adults, why is consent not a viable defense? Has the issue of the wife's desire for protection from unwanted sexual congress and unwanted sexual practices actually been addressed? Has the legal fiction of the two becoming one after marriage, and that one the husband,

created a situation in which wives may be freely victimized by those very males to whom the wives' trust is surrendered?

Questions such as these are addressed rather differently by women and by the legal system. Some of the women have begun to lobby for change in the rape laws. One desired change is the inclusion of husbands as parties to whom the rape laws would extend (Gilson, 1976).

#### F. Corroboration

In the past, corroboration has been required for the various elements of a rape. New York in 1967 required that evidence other than the word of the victim be produced to verify force or lack of consent, penetration, and identity of the assailant (People vs. Linzy). The New York requirement of identity corroboration was rescinded in 1973 (Goldstein, 1973). Astor (1974) states that these requirements of evidence beyond the testimony of the complainant rest on three assumptions: (1) the women will falsely charge rape for revenge or other reasons; (2) males fear that the charge of rape is so heinous that juries will be predisposed to convict; and (3) the difficulty of proof as to whether the act was consenting intercourse or forcible rape. All of these assumptions favor the defendant. But the assumptions may not all bear equal validity. The New York Sex Crimes Analysis Unit asserted that only 2 percent of the reported cases were found to be false (quoted in Astor, 1974); the FBI Uniform Crime Reports (1975) lists as a national average 15 percent of the reported rapes classified as unfounded, although this figure does not differentiate between false accusations and unprosecutable cases. However, 73 percent of the rapes in the misdemeanor category were

dismissed either because the victim had failed to appear or dropped the charge.

Corroboration requirements call for additional evidence that tends to support the word of the witness. Direct corroboration such as an eyewitness is rarely available. Eyewitnesses were present in only 4 percent of the rape cases studied by Kalven and Zeisel (1966). Circumstantial evidence is admissible and may include such things as heard screams, damage to the victim's body, clothes, or environment; fingerprints; medical evidence and testimony; promptness of complaint to friends or police; presence of blood or semen on the victim's body, lack of reason to submit falsified charges; testimony relating to the victim's emotional condition; evidence of breaking and entering of the victim's home or property; conduct of the accused at the time of arrest; opportunity for the accused to commit the crime as charged (*Allison vs. U.S.*, 1969); or other evidence which supports the complainant's story. Corroborative evidence does not prove that an event transpired as alleged; it merely establishes a probability that the event could have occurred as alleged. Rape is the only violent crime requiring corroboration. The requirement of corroboration may be a more stringent standard that is not applied in other types of cases. Corroboration is often required for the offenses of perjury, treason, or accessory to a crime. Difficulties inherent in corroboration requirements have been noted. One difficulty with corroboration is that an armed and an unarmed assailant must expend different amounts of force and, therefore, leave different amounts of ready corroborational evidence. An unarmed assailant may expend considerable force in subduing a victim. A woman facing a weapon, a gang of rapists, or other forms of overwhelming coercion may not actively

resist due to fear for her life. Indirect corroboration becomes exceedingly difficult to attain in convincing form without evidence of force. Corroboration requirements do not allow introduction of evidence of other sex crimes of the defendant occurring in the past or with a different victim, unless it aids in confirmation of the accused's identity.

From a legal perspective, corroboration has been established through introduction of at least one of the following:

1. Similarity of circumstances (in *Re G.*, 1972);
2. Evidence of similar conduct by the defendant (*State vs. Arnold*);
3. Circumstantial evidence (*State vs. Polson*, *State vs. Smith*);
4. Circumstantial evidence from minor victims (*U.S. vs. Jones*, *State vs. Grady*) or involving minor assailants (*In Interest of Williams*);
5. Medical evidence (*State vs. Anderson*; *Robinson vs. State*, *Luna vs. State*);
6. Extrinsic circumstances (*State vs. Ferguson*);
7. Surrounding circumstances (*People vs. Porter*);
8. Photographs such as those of sexual acts between one defendant and his daughter (*People vs. Byrnes*); or
9. A combination of direct and circumstantial evidence (*State vs. Goodrich*; *Lynch vs. State*).

Corroboration may not be required, depending on local statute requirements, if the victim's testimony is clear and convincing (*People vs. Kincaid*; *State vs. Williams*). The corroborational evidence takes on added significance when the victim failed to make prompt complaint (*State vs. Fisher*). Failure of the victim to make an outcry or prompt report without corroborational evidence must be explained for consideration by the jury (*Villareal vs. State*).

Other forms of corroboration have included character evidence and psychiatric evidence. Character evidence concerning the complainant serves to divert the jury's attention from the alleged assault to the complainant's history of conduct (Complainant credibility, 1973). Psychiatric evidence may be used in a wider application to impeach the complainant's credibility. Note was taken in *People vs. Cowles* that the victim was a "pathological falsifier, a nymphomaniac, and a sexual pervert" (p. 431). Negative psychiatric testimony can completely destroy the victim's credibility.

A thorny problem from both the legal and psychological perspective involves the impeachment of witnesses in sex cases. An exceedingly fine boundary exists between protection of the rights of the accused and violation of the rights of the victim. The evolution of rules governing admissibility of evidence has generally taken a suspicious view of the female victim. Of historical interest is a statement from Machtinger (1949): "It is quite apparent that the circumstances of a sex case are unique in that the charge often stems from the mental traits of the prosecuting witness" (p. 754).

Machtinger (1949) discusses the situation for the admission of psychiatric testimony for the impeachment of the prosecuting witnesses in sex cases. Two types of evidence are available to the court: the community judgment of the reputation of the witness, and evidence of specific instances of misconduct.

Competency of the prosecuting witness is certified if she has the ability to observe, recollect, and communicate the essentials about which she is called to testify, with accuracy sufficient to make the testimony correspond to knowledge and recollection and if she appreciates the nature and obligation of the oath, or more correctly, obligation to tell the truth (p. 753).

Machtinger would like to see included in the evidence available to the court in sex cases the opinions of psychiatrists, social workers, and probation officers concerning the moral and mental traits of the complaining witness. Such "evidence" is currently inadmissible under the opinion rule. Cited as worthwhile precedent was an Oklahoma case for rape of a minor in which the court allowed the opinions of physicians as to the character of the victim as a "nymphomaniac" who was "guilty of such depraved moral practices as to make her unworthy of belief" (p. 752). The rape conviction eventually was affirmed since the prosecution was able to introduce a medical witness who affirmed that the prosecuting witness was in fact a normal girl (Miller vs. State).

The preceding information may serve to highlight the dangers of virtually unregulated testimony aimed at witness impeachment. The conflict between testimonies of defense-called and prosecution-called psychiatrists is a long-standing legal joke. Trained professionals differ on their evaluative opinions of the same witness. If such unqualified persons as social workers and probation officers are allowed to introduce personal opinions into the judicial proceeding in order to impeach victim credibility, far fewer convictions would be obtained.

The suspiciousness exhibited toward the complaining witness in a sex offense case is but one instance of legal sexism. Other aspects of this pervasive problem include differential administration of physical examinations, differential detention policies, and variations between self-report and official versions of female delinquency (Klein, 1973). Sexism is prevalent in the treatment accorded the youthful female offender. Nearly 75 percent of underage females as compared with less than 30 percent of underage males are arrested for "status offenses"

such as promiscuity, bad behavior, or running away from home (Cohen, 1977). Once in the criminal justice system, such offenders are more likely to be detained and held longer even though they have not committed any criminal offense. "The offense of most of the young women going before the courts was nonconformity to a social model of what is accepted behavior for young girls," says Judge Lisa Richette of the Philadelphia Court of Common Pleas (Cohen, 1977). In the face of such differential treatment accorded offenders before the bar, to make the process of seeking legal redress for the rape victim more difficult through institution of unlimited credibility impeachment appears both unnecessary and unjust.

#### G. Rights of the Accused

In order to provide protection to those accused of rape, care must be taken not to abrogate their civil rights (Sagarin, 1975). A distinction must be made between protection of the rights of the accused and consideration of the rights of the victim since they are so intimately related. Within the trial proceeding psychological factors operate to the benefit of both the prosecution and the defense. At the start of the trial, the defense has a "presumption of innocence," i.e., the defendant is presumed to be innocent of the crime as charged until the prosecution implicates the defendant "beyond a reasonable doubt." Conversely, the prosecution benefits from two psychological factors. First, "the People of the State of Oklahoma" charge the defendant with the commission of crimes from which the public must be protected. Second, the juror may believe at the beginning of the trial that the State would not

go to the trouble of prosecution in this age of plea-bargaining unless the defendant is guilty as charged (Toch, 1961).

Protection of the rights of the accused cannot occur at the expense of the rights of the victim. As indicated earlier, corroboration requirements favor the defendant. Currently, within the legal system, the accusation of the victim is viewed with suspiciousness. Various defenses shift the trial emphasis from the defendant to the victim. A defense of "false accusation" provokes examination of the victim's mental health and prior sexual history. A defense of "consensual intercourse" permits the cross-examination of the victim in the area of prior sexual practices. A defense of "mistaken identity" may be used in a rape case as well as other crimes. Corroboration of the defendant's alibi will be required. The perpetrator of a rape usually is seen at close range by the victim. However, women may psychologically block out memories surrounding the violation; thus, later there may be difficulty in positively identifying the assailant (Pagano, 1976).

Fair guidelines for probes of the victim's sexual history have been difficult, if not impossible, to establish. The 1977 International Women's Year Conference passed a resolution on rape which suggested complete abolishment of the current practice of admission of evidence concerning the victim's past sexual history. The Oklahoma Statute which limits admission of evidence and cross-examination of the victim regarding sexual conduct in prosecutions for rape and attempted rape was held to be constitutional in *Cameron vs. State*. The defendant is legally protected from such biasing probes of his past conduct, even where such conduct established a history of sex crimes. Many jurisdictions now require revelation of the defendant's and the victim's prior relationship



as well as her general reputation for chastity (People vs. Whitfield). This may free the victim from unlicensed probing of her complete sexual history. Relevancy of evidence is still a matter of the judge's discretion, however, and violations of the victim's right to privacy still permeate the legal proceeding.

The problem of proving lack of consent and providing corroborative evidence produce an unduly harsh requirement for the victim. These requirements were intended to protect the accused from false charges. The victim of other forms of assault is not required to produce witnesses to the crime or sustain bodily harm to prove lack of consent. In order to more justly recognize both the rights of the accused and the victim, the proposed Federal Criminal Code Reform Act (S.1) recommends elimination of the corroboration requirement. The Judiciary Committee has considered both the victim's right to privacy and the accused's rights and concludes the following: "Although questions of credibility in rape cases are commonly critical, there seems no reason why the traditional protection of the reasonable doubt standard is not adequate to safeguard the rights of the accused" (U.S. Senate, Judiciary Committee, p. 598). In light of the Morgan decision in England (Curley, 1976) abolishing the standard of reasonableness of belief in consent, care must be taken in America in order to avoid a similar ruling. "Reasonable doubt" and "reasonable belief" are the heart of the reasonable standard of justice for both offenders and victims.

#### H. Summary

In summary, penetration of the female sex organ by the male sex organ is the current legal requirements for the establishment of the

crime of forcible rape. Husbands cannot, at present, be charged for the rape of their wives due to the presumption of consent carried in the marriage contract. Corroboration requirements call for the presentation of evidence which tends to support the word of the complaining witness. Any legitimate evidence which establishes the probability that an event could have transpired as alleged may be introduced. Rape is the only violent crime which requires corroboration, and this places an additional burden on the victim. The exact corroborational evidence required varies across jurisdictions, and may not be required if the victim made prompt complaint and is able to testify clearly and convincingly. Care must be taken in order not to abrogate the rights of either the accused or the accuser.

## CHAPTER VI

### THE COURT

Court procedure has been designed to facilitate the administration of justice. The judge, jury, and attorneys are an interrelated system with different functions. The function of the court is to determine which laws are applicable to the current case and to instruct the jury. The jury is charged with the responsibility of determining the facts of a case and applying the law to the given evidence. The attorneys adopt an adversary role and attempt to present the case as favorably as is possible for their side.

#### A. The Jury

One way in which attorneys aid in the favorable presentation of their case is through the voir dire examinations of potential jurors. Vior dire simply means "to tell the truth." The voir dire examination has three functions according to Toch (1961). The first is to select jurors that are favorable to the defense or prosecution, depending on which counsel is doing the examining. Juror backgrounds are a vital element in a trial. Jury expert Hans Zeisel says, "The composition of a jury has as much to do with the outcome of a trial as does the evidence itself" (Yuen, 1977, p. 47). Use of voter lists alone as a source for jurors discriminates against nonvoters such as the poor, the young, the minorities, and women. This gives the prosecution a built-in advantage

and may require defendants to prove their innocence which, by law, should be presumed until contradicted.

The second function is to create a favorable atmosphere for the further presentation of the case. The third function is to sensitize the jurors to problems with which the opposing counsel must deal. Counsel for either side may excuse any juror who possesses attitudes prejudicial to that side. The lawyers are provided an unlimited number of challenges "for cause" and a limited number of peremptory challenges which permit excuse of any juror without having to give a specific reason for doing so. Challenges used most often are peremptory challenges in order not to alienate jurors who may be similar to the juror excused "for cause."

Attorneys often exercise their right to peremptory challenges during jury selection to excuse obviously biased or prejudiced jurors. They frequently rely on intuition and logic in selecting which jurors to exclude. Rape trials present particular difficulties in jury selection. An unbiased jury is fairly easy to obtain for other crimes, but most people have a prior attitudinal structure concerning sexual matters which influences their jury service. Jurors probably begin listening to testimony with an attitudinal pattern already in effect. One criminal defense attorney addresses the issue of jury selection in the following manner:

I want people on the jury that have never had a rape happen to them. I want to know if anyone in their family has ever been victimized in this way. Since all women are potential victims, I am uneasy with any women serving on a rape jury. Of course, you get men like me who want to see the "rapo" put away before they assault my wife or children next. What I mostly want is a fair and impartial jury. I settle for an attentive jury. (Thomas, Note 7).

Any attorney can select as he/she sees fit because case variables will be presented differently to different juries. Any demographic or

descriptive data of the jurors can be effectively used by a defense or prosecution attorney. Many attorneys prepare their presentations to the average or representative local jury.

#### B. Aim of Deliberations

One of the primary ways that simulated juries differ from actual criminal juries is in the deliberation process. Most of the literature surveyed attempted to arrive at projected verdicts based on the pooling of individual juror judgments. This presents spurious results since deliberation has effects on judgment far beyond any singular process of decision-making. The deliberation process has a two-fold aim. One is the exchange and evaluation of information by all persons involved. The second aim is to arrive at a consensus. Within this framework, many influences play in shaping the final verdict: the composition of the jury, the effectiveness of the foreman, participation rates of individual members, and the special effect of group deliberation, among others.

The composition of the jury tends to be somewhat random concerning the characteristics of individual members. Juries are generally selected from the rolls of registered local voters. Sole proprietors of businesses, handicapped persons, persons under medical care, persons aged 65 years and older, and persons for whom jury service is an excessive hardship may be excused. Additionally, jurors may be excused by prosecution or defense attorneys during voir dire.

Some research has examined the process of deliberation. Since the direct study of actual trial juries is not legally possible, researchers must utilize a variety of groups operating under similar group processes. For instance, Hare (1952) researched interaction and consensus in varied

size groups of Boy Scouts. Some similarities with jury processes may be observed. With juries, each member would feel internally compelled to present any agreeing or disagreeing sentiment directly to the group. The doctrine of the conscientious juror (Harris, 1972) suggests that members of a jury will consider the arguments advanced by any member, and will outvote the minority only after due deliberation. As long as individuals have a chance to present ideas in a group discussion, they are generally satisfied with the results of that discussion, even if those ideas are not accepted. A concern noted by Hare (1952) was that with a twelve-member group, interaction among members may be limited by the participants feeling that their individual opinions are not important enough to be presented to the group. Hopefully, the doctrine of the conscientious juror prevents stifled discussion in a judicial setting.

A factor which influences rates of juror participation in the deliberations is the status of a juror. Evidence indicates that higher status persons participate significantly more often in the deliberation process (Strodtbeck & Mann, 1956). Males and persons of high status occupations have higher rates of participation, more influence, greater satisfaction, and more perceived competence in jury deliberations than do women and persons of low status occupations (Strodtbeck, James, & Hawkins, 1957). Strodtbeck et al. (1957) also noted that the comments of higher status males are perceived to have greater value. Jury members expect that the foreman will be a male of higher occupational status.

Both gender and status have been shown to have an impact on deliberations. A juror's gender influences the amount of juror participation in discussions. This trend has been diminishing, however. In more recent investigations both male and female jurors are seen to be equalizing their

respective rates of participation. Strodbeck and Mann (1956) reported the relative rates of verbal discussion by gender as 61 percent for males and 39 percent for females. In 1959, James reported the average verbal contribution by individual jurors was 9 percent, with individual female jurors contributing 7 percent. By 1967, females and males were contributing about equally to jury deliberation proceedings (Simon, 1967). The causes of the change in relative contributions over the years may only be speculated, although a salient factor may well be the changing roles of both men and women in America.

Amount of participation is not the only gender-related issue during deliberation. Males and females may differ in their patterns of communication. According to an analysis by Strodbeck and Mann (1956), males initiated long bursts of acts aimed at task resolution, whereas females tended to react more to the statements of others. These sex differences in patterns of communication may be of particular importance in deliberations. Bray (1974) found that all female juries followed a process which resulted in fewer hung juries and fewer guilty verdicts. The basis of this verdict outcome is unclear--different sex roles, factors of evidence, or differences in communication patterns are potential influencing factors. Further investigations may be required to determine the generalizability of Bray's results.

### C. Jury Foreman

One member of the jury will be elected foreman. His/her function is to assume responsibility for the execution of the deliberations. From a content analysis of the foreman's contributions during discussion, Strodbeck, James, and Hawkins (1957) concluded that the foreman tends to

assume a regulatory role during deliberations. Persons in authority tend to be respected and to some extent deferred to by other members of the group. The foreman's contributions may be accorded more value than the contributions of certain other members, or may be overly valued only in the area of regulatory matters. The persons most likely to be selected foreman are high status males. Strodbeck, James, and Hawkins (1957) point out that only one fifth the number of women foremen that would be expected by chance were actually selected. Davis et al. (1975) reported that 71 percent of the student jurors were male, yet 82 percent of the elected foremen were male. This tends to support the conclusion of Maccoby and Jacklin that in adult mixed groups ". . . formal leadership tends to go to males in the initial phases of interaction. . ." (Cox, 1976, p. 107).

#### D. Jury Decision Alternatives

The decision rules imposed on a jury do affect the outcomes in terms of the probability of conviction. A defendant with 80 percent apparent guilt statistically is eight times more likely to be convicted with a requirement of 10 out of 12 convinced jurors, while those of 90 percent apparent guilt under the same decision rule will be convicted three times more often (Friedman, 1972). The apparently innocent defendant will not be convicted, regardless of the decision rule. Those defendants with prior arrest records or poor defense, lending credence to the appearance of guilt, will be convicted more often under the majority decision rules as opposed to the unanimity rules.

Verdicts are not appreciably altered by a majority rule as contrasted with a unanimity rule (Nemeth, 1977). Experimental unanimity groups



differed from majority groups in that they were more likely to continue deliberations until full consensus was reached and individual jurors felt that justice had actually been administered. A hung decision was reached more often with groups operating under a unanimity rule. Majority rules may serve to decrease the robustness of the conflict during deliberations and may impede the ability of the minority faction to persuade the majority. The only defendants adversely affected by a majority rule are the apparently guilty defendants who have convinced too few jurors of a reasonable doubt of their guilt.

Verdicts may be altered by the stipulated sentence the law may impose on the defendant upon conviction. If the jury is not in charge of sentencing or must impose a sentence "too harsh" for the crime as charged, it may refuse to convict an apparently guilty defendant. This occurs due to restriction of decision alternatives as a real world jury phenomenon. When a jury is instructed to bring in a verdict of not guilty or guilty in a specified degree with a conjoint "too severe" penalty, the jurors will tend to bring in a verdict of not guilty. In a simulated robbery-murder trial, jurors with an option of a moderate penalty seldom brought in a not guilty verdict, whereas those jurors without such a option acquitted the defendant 54 percent of the time (Vidmar, 1972). Thus, research evidence suggests that lowering the penalty for rape convictions to a reasonable sentence provided for by graduated degrees of charged sexual assault with graduated penalties would probably result in a higher rate of convictions.

#### E. Leniency Shift

Izzett and Leginski (1974) demonstrated that group discussion tended to produce a leniency shift that eliminated the initial differences in

sentencing tendencies for individual jurors, at least for the unattractive defendant. Myers and Kaplan (Note 5) found that group deliberations polarized the mean judgments given by individual jurors. The effect of a two-and-a-half minute deliberation was to shift the mean judgment in low guilt cases to significantly less guilty and to form a correspondent shift in high guilt cases. A trend for a concurrent shift in sentencing was observed, although that trend did not attain significance. A similar process was observed by Davis (1973), who noted an initial skewed individual distribution under a majority rule.

Davis et al. (1975) found a 22 percent conviction vote from individual jurors in an adapted version of an actual rape case, but no jury deliberating the case brought in a guilty verdict. In the Bray (1974) experiment, females initially favored conviction in a rape case significantly more often than did males. No significant differences were obtained, however, in the jury decisions. This serves to illustrate the dangers in generalizing from juror decision schemes to jury paradigms. The effect of initial differences in amount of judged guilt seems to be a contributing rather than determining influence in the consensus seeking jury process.

Individuals gave a significantly higher leniency proportion of guilty verdicts than do juries in some situations (Davis et al., 1975; Gleason & Harris, 1976). The leniency shift may be a factor of importance to a defendant in the decision of selection of trial by judge or trial by jury. Rumsey (1976) also notes that a shift toward leniency after discussion raises the possibility that jury deliberations may favor the defendant. The leniency shift effect appears to hold in a wide variety of

psycho-legalistic situations, and could be effectively used by the marginal apparently-guilty defendant.

The process of deliberation must eventuate in a verdict. Jurors do not always behave as the doctrine of the conscientious juror would dictate. The eventual verdict is determined by the factors of each individual juror's conclusion as to the relative likelihood of guilt or innocence and modified by the discussion process. The deliberation process appears to be the method by which a consensus is ultimately reached, although the end result tends to coincide with the initial majority position. Kalven and Zeisel (1966) have concluded that the jury verdict is substantially determined by the initial juror majority. Most verdicts are arrived at individually in the courtroom (Weld & Danzig, 1940). The jurors make their decisions somewhere in the judicial proceeding, not necessarily waiting until after all the facts are heard or until the group discusses the issue during deliberations.

#### F. Summary

The court system is composed of interrelated parts with different functions. The court determines applicable laws, the jury determines the facts of the case and applies the law, and the attorneys try to present a case favorable for their client. Jury selection in rape trials presents particular difficulties because jurors enter the trial with an attitudinal system concerning sexual matters in effect. Jury deliberations present the opportunity for jurors to exchange and evaluate information and aid in arriving at a consensus. Influences which shape the final verdict include the composition of the jury, the effectiveness of the foreman, participation rates of individual members, and the special leniency shift following

group deliberation. The decision rule in effect, requiring unanimity or simply majority, and the statutory harshness of the penalty upon conviction may also affect the obtained verdict.

## CHAPTER VII

### DEMOGRAPHIC AND EXTRANEIOUS VARIABLES

#### A. Gender Differences

Certain differences between the behaviors of male and female subject-jurors have been observed by a variety of investigators. These differences are not uniformly consistent across jurors or judicial situations. Indeed, as Strodtbeck and Mann (1956) noted: "It is only in the statistical analysis of aggregates of acts that the sex-typed connotation emerges" (p. 3). Extreme caution should be used in interpretation of gender differences reported in judicial research, because prior investigations in the area of gender differences observed in judicial judgments have relied for their data base on simulation jury trials or on averages of individual judgments.

Research has indicated that gender differences sometimes exist, but with little regularity or consistency. Nemeth, Endicott and Wachtler (1976) found no consistent evidence for the belief that male and female jurors in a traditional courtroom setting differ with regard to sympathy for the defendant, persuasibility, or passivity. Nagel and Weitzman (1972) found that each gender favors its own in amounts of money awarded in civil trials. Each gender also tends to give lower penalties to its own members (Rose & Prell, 1955). Consistency of gender differences found in sex crime cases has been shown to be modified by other variables. For instance, Simon (1967) found that housewives were more

punitive toward the defendant than were male jurors in an incest case; however, working women's judgments resembled the male jurors' verdict. Gender differences may be of particular importance for the criminal charge of rape. Generally, a confused pattern of differential sentencing, differential preferences in assigning guilt, and varying lengths of parole eligibility have been found in various investigations. For instance, gender differences in guilt preferences have been observed under certain conditions (Bray, 1974; Davis et al., 1975; Efram, 1974; Sealy & Cornish, 1973) and not under others (Griffitt & Jackson, 1973; Sealy & Cornish, 1973). Gender differences have been observed in deliberation styles by some investigators (Strodtbeck & Mann, 1956) and not by others (Nemeth, Endicott & Wachtler, 1976).

A similar pattern of gender differences has been observed in sentencing. No statistically significant effect of gender-differences was observed in sentencing by subject-jurors in several studies (Jones & Aronsen, 1973; Landy & Aronson, 1969; Richey & Fichter, 1969). No explanation was offered in one case reporting a gender difference in sentencing (Griffitt & Jackson, 1973). In another investigation, male jurors tended to give longer sentences when the defendant's background was varied; female jurors gave longer sentences when remorse was manipulated (Rumsey, 1976).

Gender differences may be obtained even in some cases involving the same type of criminal charges. For instance, in one study involving a negligent homicide case, female jurors tended to impose longer sentences and harsher sentences (Griffitt & Jackson, 1973). In another study utilizing a negligent homicide paradigm, no gender differences were found (Landy & Aronson, 1969).

Gender differences have been observed in cases dealing with rape. These types of gender differences among jurors may be the result of individual attitudinal structures, patterns of communication, role and status considerations, or a variety of other individual differences. In one investigation of a mock jury, male subjects perceived rape to be more difficult to commit than did female subjects (Bray, 1974). All subjects who served thought that rape charges were slightly justified in the recorded trial scenario. All female juries, however, followed a process that resulted in fewer hung juries and more not guilty verdicts than did all male juries. Mixed male/female juries' verdicts converged (Bray, 1974). In contradiction of the above finding, Smith et al. (1976) found that female jurors gave higher sentences for rape than did male jurors. In addition, male subjects rated the victim as careless and likely to have provoked the rape. Females tended to identify with the victim. In a non-rape experimental content, Taylor and Epstein (1976) found that female subjects are significantly more aggressive than are male subjects toward male defendants. Thus, if females consider rape a serious crime, their impeded conviction rate is difficult to interpret.

The gender difference effect may be due in part to the influence of variables other than sex. For instance, in addition to gender differences, L'Armand and Pepitone (1977) found significant gender differences in length of recommended sentences based on the variables of the victim's prior sexual history. The amount of corroboration variable was not statistically significant. Rape between strangers was the most severely punished (mean = 13.54 years sentenced) and rape of a "dating promiscuous woman" was the least severely punished (mean = 4.5 years). Additionally, ratings of the seriousness of the crime and amount of inflicted damage to

the woman were good predictors of length of recommended sentences. These findings assume legal implications in that the majority of rapes occur between acquainted persons (Amir, 1971; Brownmiller, 1975; Hayman et al., 1968). Male subjects recommended shorter sentences in all rape scenarios involving previous acquaintances. Female subjects recommended sentences proportional to the previous relationship and previous consensual intercourse, and did not respond on the basis of any one condition variation.

A study of male and female juror ratings of various dimensions of intent, outcome, and pain in rape scenarios found differential patterns of "judicial" response (Heim, Malamuth & Feshbach, 1977). Females were more responsive to the effects of outcome and pain, while males were more concerned with intent. Females assigned more guilt and punishment, and generally were more punitive when the rape was previously planned. Males punished unintentional rapes more than intentional rapes: a finding which is difficult to explain. Male subjects did differentiate between these conditions, in general ascribing less guilt, shorter sentences and lower sentences, particular for intentional rapes. This finding, although isolated, has implications for the criminal justice system. Some essential items include that the gender of the juror may influence which pieces of information presented as evidence are deemed salient. Clear gender differences are found in amount of perceived guilt and length of imposed sentence. Males seem to derogate the victim, although this process of derogation is subtle. Male jurors, therefore, are more likely to hold the victim responsible for the crime, to dispense fewer guilty verdicts, and to recommend shorter sentences upon conviction.



A related finding examines gender differences in moralism and punitiveness (Richey & Fichter, 1969). They surveyed male and female subjects on two simulated offenses: cheating on an exam and possession of marijuana. They found that both genders prescribed similar punishment for males, but that males prescribed less severe punishment for females.

A double standard may not operate to the benefit of a female rape victim. Women are as severe at attributing fault to the victim of a rape as men (Jones & Aronson, 1973). This result has been interpreted according to attribution theory: "When a victim is someone who does not intrinsically merit suffering, that is, someone who is 'respectable,' jurors will find it necessary to attribute behavioral responsibility to the victim in order to justify her suffering" (Jones & Aronson, 1973, p. 419). In this case, the double standard has become a double bind. If the victim is respectable, then she must be derogated and suspected of collusion in the crime. If the victim is not respectable, then she is presumed to have consented and is suspected of collusion in the crime. For many victims, the jury trial constitutes a no-win situation.

In summary, gender difference investigations of the behavior of male and female jurors have relied on simulation juries or on averages of individual judgments. A confused pattern of differential sentencing, differential preferences in assigning guilt, and varying harshness of imposed sentences have been reported in various investigations. Gender differences are particularly marked in experimental paradigms of rape cases, although they may be due in part to the influence of variables other than gender. In general, male jurors ascribe less guilt and shorter sentences for rapists than do female jurors. The difference may be due to differential identification of jurors with either the assailant

or victim and to differential attributions concerning causality and responsibility.

## B. Jury Verdict

The jury is charged with the task of determining the facts and then applying the law to each particular case. Juries are generally composed of local citizens. Weld and Danzig (1940) noted that several extraneous variables which influence jurors are testimony, opening and closing statements of counsel, personalities of witnesses, and personalities of the counsel. They reveal that personal standards are brought by the jurors into the trial, and under some conditions jurors may decide the case irrelevant of the law. The jury may base its decision on factors such as the relative weight assigned to the different witnesses' testimonies or on the basis of inadmissible evidence. Different witnesses may sway juries in different directions on the basis of their personal characteristics. The interpersonal variables of attractiveness and similarity may operate to make one witness more "believable" than the other witness.

### 1. Gender of Witness

An additional consideration at this point is that rape is the only crime in which the defendant is consistently male and the claimant is consistently female. Many crimes are heard by juries in which the issue boils down to "which witness is the more credible." Rape cases are the only legal charge in which it is consistently his word against hers. Essential to an understanding of the full impact of this is that people tend to value contributions of males higher than those of females

(Goldberg, 1968). Males tend to automatically be accorded more status and influence, even within juries (Strodtbeck, James & Hawkins, 1957). The female victim is facing a culturally biased situation. The defense counsel will attempt to discredit her as a witness, including but not limited to besmirchment of her reputation for chastity. The jury will tend to evaluate her testimony more negatively than the defendant's solely because she is female.

## 2. Inadmissible Evidence

The jury may base its decision on inadmissible evidence. Information which comes to the jury from sources other than the admissible courtroom proceedings may effect the verdict. Influence may result from information about the defendant's or victim's character, demographic information such as socio-economic status, personal history, or pretrial publicity. Sue, Smith and Gilbert (1974) found that damaging, relevant pretrial publicity was utilized by female but not male subjects to reach a guilty verdict more frequently. A similar finding using a rape trial paradigm was observed by Hoiberg and Stires (1973). Even though the two studies agree, the interpretation is still unclear whether female jurors are affected more than male jurors by biasing pretrial publicity or whether the significant differences are concerned with gender differences in the area of rape trials.

According to Hoffman and Bradley (1952), simulated juries seem to ignore judges' instructions to disregard inadmissible evidence. They further found that juries tend to disregard the rules of law and decide cases on the basis of a few commonly remembered points of evidence. Yet the judges' instructions to disregard certain points of inadmissible

evidence are followed by some jurors. In two separate trials, jurors disregarded information about previous convictions of the defendant (Sealy & Cornish, 1973b). The individual jurors may exercise their own discretion in practice about when to ignore or follow the judges' instructions about admissibility. Inadmissible evidence is a decisive factor when the admissible case is weak (Sue, Smith & Caldwell, 1973). Obviously the judge's instructions to the jury to ignore certain evidence is not equivalent to a situation where the evidence violates the spirit of the judicial proceeding. The untenable alternative to the jury is to acquit a defendant on a technicality or to refuse to convict an apparently guilty defendant regardless of the law.

### 3. Pretrial Publicity

The effect of pretrial publicity on guilt attributions was investigated by Hoiberg and Stires (1973) in a simulated rape-murder paradigm. Heinousness (manipulated by the presentation of lurid details of the rape-murder) and prejudgment (manipulated by varying the implication that the defendant was the perpetrator of the crime) were varied. The results obtained suggested that high heinousness and high prejudgment increased the tendency of low intelligence female jurors to conclude after hearing the trial evidence that the defendant was guilty as charged. Neither dimension significantly influenced the guilt verdicts of male jurors. Hoiberg and Stires (1973) discussed possible reasons for the female subjects' greater vulnerability. They indicated that the female jurors identified significantly less with the victim than did male jurors. Female jurors rated the crime as significantly less heinous than did male jurors. These results contradict a hedonic-relevance hypothesis

in favor of a position of victim differentiation. In other words, female jurors may have sought means to differentiate themselves from the victim and to subjectively minimize the gravity of her fate. Hoiberg (Note 4) indicated that defensive strategies aimed at maintaining the illusion of a just world tend to be most strongly elicited by injustice suffered by persons like oneself, e.g., in this case, females. The females' rating of the crime as less heinous than the males' ratings possibly indicates the operation of defensive minimization. Defensive minimization operates to maintain a just world paradigm by reducing or minimizing the incongruity between the victim's fate and considerations of personal worth. In any case, female jurors derogated the victim and minimized the gravity of her fate, a finding of potential importance in actual trial situations.

#### 4. Sex-Role Identification

In a study of the functions of sex-role identifications, Lipsett and Strodbeck (1967) conducted a simulated trial in which the defendant was ascribed the trait of homosexuality. The verdicts of the simulated jurors varied along the lines of sex-role identification. The jurors were categorized in terms of overt and covert masculine and feminine characteristics by way of their scores on two tests of masculinity-femininity, the Franck Drawing Completion Test (Franck & Rosen, 1949) and the Gough Femininity Scale (Gough, 1952). Male subjects who were overtly masculine and covertly feminine identified were more likely to find a homosexual defendant guilty of a charge of treason. Male subjects who were both overtly and covertly feminine identified were more likely to find the defendant not guilty. Male subjects who were both overtly

and covertly masculine identified varied the least in terms of the verdict, generally confining their conclusion to the issue of treason itself. The variability of results, which a dichotomy of conscious and unconscious sex-role identification suggests is possible, underscores the importance of this variable in sex-related trial investigations.

#### 5. Interpersonal Attraction

The effect of extraneous influences may be to result in a verdict based not on the legal merits of a case, but rather on the basis of spurious information. Additionally, it may show its influence in the length and harshness of imposed sentences or penalties. Some factors which have mediated the length of imposed sentences are attractiveness of the defendant, amount of manifest remorse, socio-economic status, social stability, and race.

Judges and juries often differ on the trial prescriptions, often based on the jury's sensitivity to some defendant characteristic. Kalven and Zeisel (1966) have documented that judges and juries often differ in their verdicts, as often as in one-third of the cases analyzed. Part of the disagreements stemmed from the effect of jurors' personal attitudes prompted by a feeling for the defendant. Experimentally, mean sentences for unattractive defendants are longer than for attractive defendants (Landy & Aronson, 1969; Sigall & Landy, 1972). Generally, when the victim is viewed positively by the jurors, the defendant will tend to receive a longer sentence (Landy & Aronson, 1969). However, attractive victims may be differentially perceived by jurors solely on the basis of their interpersonal attraction. Physical attractiveness energizes a complex of attitudes commonly held about the attractive person. These

attitudinal complexes often relate specifically to the gender of the attractive person. For example, attractive women are perceived as more sociable, heterosexually alluring, professionally successful, and personally happy than unattractive women (Dermer & Thiel, 1975). Additionally, they are expected to be more conceited, more likely to engage in adultery, and be more bourgeois than less attractive women. As Dermer and Thiel (1975) note, the more attractive women may have the greater difficulty prosecuting a rapist or seeking acquittal on prostitution charges. She would fare better if she were the defendant rather than the victim.

#### 6. Socio-Economic Status

Other extraneous influences on verdicts have been documented. For instance, the amount of manifest defendant remorse mediates, to some extent, the length of imposed sentence (Rumsey, 1976). Socio-economic status (SES), which is a composite of variables such as income, education, and residence, does not always predictably affect judicial outcome. A low SES defendant tends to be judged as more blameworthy by a jury (Gleason & Harris, 1976). Background of the defendant did not significantly mitigate length of imposed sentence in one experimental study; in fact, sentences for low SES defendants tended to be longer than sentences imposed on higher SES (upper-middle class) subjects (Rumsey, 1976). Defendants described positively in terms of social stability tended to have shorter sentences. When the victim is viewed positively, the defendant will be more severely sentenced (Landy & Aronson, 1969). Gordon and Jacobs (1969) found no significant differences in the average guilty verdicts as an effect of differing affluence of the defendant as inferred from residence cues.

These studies suggest that the higher SES defendant will receive greater leniency from a jury than will the lower SES defendant, although this, by itself, may be insufficient to affect verdicts and sentencing. The effects of the variable of the race of the defendant may affect the length of imposed sentence. Race of the defendant, acting in conjunction with the type of crime, has been found to produce differential sentencing in actual jury proceedings in the state of Texas (Bullock, 1961).

These extraneous factors of the defendant have been shown to affect experimental and, at times, actual trial outcomes. But defendants are not the only source of extraneous influences in a trial. The individual jurors bring their own set of potentially prejudicial influences.

#### C. Demographic Variables: Jurors

Jurors differ in their predisposition to accept a verdict of defendant guilt. Two studies have examined the correlation of juror demographic variables with individual juror verdicts. Reed (1965) surveyed jurors from a variety of criminal proceedings and discovered that a verdict of guilty was more likely to be rendered by a person of higher educational level, higher social status, and who had a record of previous jury service. Factors which were not significantly correlated with guilty verdicts included age, marital status, religious preference, or amount of church attendance. Sealy and Cornish (1973) charted the effect of selected demographic variables for individual juror verdicts in cases of theft and rape. The only consistent differential result among the variables of age, sex, education, occupational status, and legal experience was that of age. Jurors under the age of 30 years were more lenient in their guilt judgments than were older jurors. The more liberal sexual



attitudes among the young in conjunction with a leniency tendency may well produce a different judicial outcome in a rape trial than would an older, more attitudinally conservative jury.

### 1. Attitude Similarity

Another variable affecting probability of conviction and harshness of imposed sentence is attitude similarity. A variety of cues may provide the initial perceived similarity. In general, when the details of the crime are held constant, a defendant similar to the jurors on attitudinal measures will probably be sentenced to a shorter prison term. Attitude similarity does not always mitigate against long sentences, however (Bray, 1974). The perceived attitudinal similarity affects factors other than sentencing. The more the perceived similarity between the jurors and the defendant, the less they judge him/her to be guilty and blameworthy (Gleason & Harris, 1976; Lund, Lewis & Harris, 1974). Attitude similarity between the defendant and the jurors often results in a judgment of less guilt of culpability (Bray, 1974).

The amount of perceived attitudinal similarity also affects factors such as interpersonal attraction. Interpersonal attraction for a stranger varies as a function of the amount of perceived attitude similarity (Byrne, 1965). Byrne (1971) has indicated that liking tends to increase linearly as the proportion of commonly-held similar attitudes increases. Griffitt and Jackson (1973) manipulated similarity of attitudes unrelated to the judicial process between the defendant and the defendant and the jurors, and found a significant effect. Attitudinally similar jurors rated the defendant as more attractive and less guilty, imposing shorter and more lenient sentences in guilty cases. In a

subsequent investigation, Mitchell and Byrne (1973) showed that subjects scoring high on the F-Scale, indicating high authoritarianism, were responding to the similarity information in making their judicial decision, whereas low authoritarianism subjects showed no significant differences as a result of the similarity information.

## 2. Authoritarianism

The personality variable of authoritarianism has received experimental attention within the individual juror paradigm. Individuals who score high on the F-Scale tend to exhibit rigidity, intolerance, and a proclivity to punish others who violate social norms (Adorno et al., 1950). In the justice system, the general finding is that the authoritarian juror may be biased toward guilty verdicts. Boehm (1968) found that high authoritarians brought in more guilty verdicts than did persons scoring as low authoritarians. High authoritarians and more conservative jurors tend to give significantly longer sentences and longer terms before eligibility for parole than do liberal and low authoritarian jurors (Bray, 1974). The high authoritarian subjects allowed trial irrelevant information to affect their judgments, whereas low authoritarian subjects disregarded that information concerning the defendant's character as directed by the judge (Mitchell & Byrne, 1973). In a mock theft case, authoritarian but not egalitarian jurors were swayed in determining guilt by the similarity or dissimilarity of the defendant's attitudes (Mitchell & Bryne, 1973). The trend seems to be that jurors high in authoritarianism tend to recommend longer sentences and exhibit greater punitiveness. These are individual juror results, and care must

be taken in generalizing from these results due to the demonstrable leniency shift in juror outcomes following deliberations.

#### D. Summary

In summary, many demographic and extraneous influences operate on trial juries. Some of these influences include sex of the juror, sex of the witness, introduction of inadmissible evidence, amount and type of pretrial publicity, interpersonal attraction, defendant remorse, defendant socio-economic status, and race. These factors have been shown to influence experimental and actual trial outcomes.

Jurors who have higher educational levels, higher social status, a record of previous jury service, and ages over 30 years have been experimentally found to exhibit a preference for guilty verdicts. The variables of attitude similarity between defendant and jurors, interpersonal attraction, and juror authoritarianism may all differentially modify eventual verdicts.

## CHAPTER VIII

### STATEMENT OF THE PROBLEM

Historically, investigations in this area have manipulated facts or dimensions of evidence and relied on averages of individual juror judgments to project trial outcomes. The literature surveyed clearly indicates that rape trial dispositions are very sensitive to variations in amount and kind of factual information presented. In addition to controlling for the evidence presented, other factors should be taken into account which also influence rape trial dispositions. For example, the attitudes of all participants in the trial setting may bias the proceedings regardless of the factual or legal situation. A host of other factors, such as age, prior victimization, inadmissible evidence, socioeconomic status, social stability, interpersonal attractiveness, race, and sex can influence the outcome of trial deliberations.

Often, studies have not examined the effect of jury deliberation. The deliberation process in actual criminal trials is entrusted to secrecy since they cannot be taped or observed. Thus, it is exceedingly difficult to obtain empirically sound studies of deliberation effects which are similar to real-world proceedings. Factors to be controlled for, or experimentally manipulated, are as follows: (1) simulation jurors should be similar to actual jurors in perceptual and attitudinal set, and (2) the amount of information and method of presentation of trial material should be consistent for all jurors. Some authors suggest that individual

and group measures should be taken in experimental situations (Miller, Fontes, Boster, & Sunnafrank, 1977). However, there is a concern that if measures are used with individual jurors who then become part of an operational jury, the juror may be inadvertantly sensitized to certain aspects of the courtroom proceeding and thereby biased. This effect is predicted to be operating in rape trials. In one sense, these trials come to resemble the versatile chameleon. As surely as the color of the surroundings determines the color of the chameleon's skin, the situation surrounding a rape trial changes verdicts and penalties change.

The objective of the proposed research is to investigate the impact of gender difference effects among jurors and on the outcome of a rape trial. In order to investigate the effects of such factors on the disposition of a rape trial, an experimental design must be utilized that takes into account the following constraints: first, the initial trial materials and transcripts must be essentially unbiased toward either the prosecution or the defense so that trial outcome is not predetermined by the nature of the evidence; and second, the trial jury must be allowed to engage in deliberation in order to approximate as closely as is practical the actual proceeding of a trial.

One of the major methodological improvements in the proposed study is the freedom from the specific effects of the evidentiary dimensions: the rape trial proceeding to be used for this study has equal points of evidence on each side. Testimony of the victim is, however, somewhat more substantial; this element was allowed due to the tendency of most simulation juries to acquit most defendants. There is no corroboration of any of the victim's testimony with the exception of prompt complaint to the authorities and the police officer's testimony attesting to evidence of

physical harm to the victim. The medical doctor's testimony does not verify whether or not intercourse was achieved nor does it attest to the use of force. Neither the victim nor the defendant can substantiate their own versions of what did or did not happen. It simply becomes a matter of which of two mutually exclusive stories will be believed by the jury.

Another way in which this investigation is unique is in the nature of the stimulus materials utilized. Other investigations have for the most part used modified transcripts of actual rape trial proceedings or improvised scenarios which vary evidentiary dimensions. The simulation juror thus has a vastly constricted array of stimuli on which to base his/her judicial judgment, and may show spurious significance in relation to the varied dimensions. During the actual trial, the jurors are exposed not only to the verbal content but also to a host of other cues such as voice and tonal inflections, verbal context, and answer structure. Nonverbal communication which accompanies the verbal information includes the effects of proxemics, chronemics, kinesics, and paralinguistics (Gordon, 1975). Proxemic communication involves the conveyance of meaning through the use of interpersonal space. Chronemics involves the use of time. Kinesic communication is the use of body movement in order to aid in the communicating of meaning. Paralinguistic communication includes volume, pitch, and voice quality. All of these cues modify, support, or disqualify the verbal communication of meaning. Due to their power in influencing juror perception of the validity and salience of presented evidence, these factors must be included in any realistic study of judicial process. In this study a videotape of a mock trial with actors will be used in which all of these cues are evident.

Rape as an issue has been shown in the literature to be sensitive to the effect of gender. In this author's opinion, in rape trials the most important factors that influence jury proceedings and outcomes are sex difference effects among jurors and juror attitudes. In order to investigate the potential factor of sex differences among jurors upon the deliberation process, five experimental juries will be formed and tested. The five juries will have the following composition: one jury will be composed of only male subjects; one will have nine male and three female members; one will be equally balanced by sex with six male and six female members; one will have nine female and three male members, and one will be composed entirely of female subject-jurors. It is expected that different evidentiary issues will receive different emphases in the different juries. Pretesting has yielded the following categories of issues: harm to the victim; possibility of escape; whether the defendant was physically capable of intercourse; the desire for more evidence; testimony of the medical doctor; the intoxication of the defendant; whether the victim was also intoxicated; testimony concerning a lack of semen in the vaginal specimen; legal requirements to establish rape; how the defendant and the complainant parted company; whether the complainant was abducted; alternate interpretations of facts and motivations; the direction of travel; invocation of the reasonable doubt standard; whether the rape charge was mistaken; nonverbal cues of the actors; amount of resistance by the complainant; the marital status of the defendant; amount of threat; and a miscellaneous category for pauses, digressions, and balloting. As the nature of the present investigation is exploratory, no specific hypotheses can be stated at this time.

## CHAPTER IX

### METHOD

#### A. Materials

A videotape based on a modified rape trial transcript has been made using graduate student actors. The trial segments include the testimonies of the defendant, the victim, the medical doctor, and the police officer. The doctor had failed to collect any corroborative evidence which would have aided in establishing the validity of the victim's complaint. Thus, no conclusive medical evidence is offered regarding penetration or the use of force. Without legal corroboration, it becomes a matter of the relative believability of the victim or the defendant. The trial sequence ends with the judge's instructions of the jury regarding law and the rules of evidence, and the matter is turned over to the deliberation of the jury. No specific outcome is suggested.

#### B. Subjects

Five twelve-member juries were formed. The subjects were recruited from university classes for the summer term. All subjects were eligible for jury service. The demographic characteristics of these juries are presented in Table I below.

#### C. Procedure

The trial videotape was viewed by 94 independent raters from



TABLE I  
DEMOGRAPHIC CHARACTERISTICS OF EXPERIMENTAL JURIES

Characteristics	Jury 1	Jury 2	Jury 3	Jury 4	Jury 5
<b>Sex</b>					
Male	0	3	6	9	12
Female	12	9	6	3	0
<b>Age</b>					
18 to 19	7	7	0	5	4
20 to 24	5	5	10	4	8
25 to 29	0	0	2	3	0
<b>Race</b>					
Caucasian	12	12	9	11	11
Afro-American	0	0	2	1	1
Native American	0	0	1	0	0
<b>Marital Status</b>					
Single	12	12	12	10	11
Married	0	0	0	2	1
<b>Prior Jury Service</b>					
Yes	0	0	1	1	0
No	12	12	11	11	12
<b>Self or Family Member Convicted of Crime?</b>					
Yes	0	0	0	0	0
No	12	12	12	12	12
<b>Related to Law Enforcement Officer?</b>					
Yes	0	3	5	8	6
No	12	9	7	4	6

general psychology classes in order to determine if it was biased toward either the prosecution or the defense. The 36 male and 58 female subjects completed the general demographic questionnaire (Appendix E) and rendered their individual verdicts without engaging in deliberation. The average of the guilty verdicts submitted by these subjects was 53.19 percent. This indicated that the trial materials were essentially unbiased toward either the defense or prosecution. A gender effect in the verdicts was observed: 69.44 percent of the male subjects returned not guilty verdicts compared to 32.76 percent of the female subjects who returned not guilty verdicts.

Each of the five juries and one control group were separately sequestered in the Observation Jury Room, an experimental room in a university building. The experimental juries reported to the Jury Room where they were greeted and seated. Before beginning any experimental participation, each juror signed a legal waiver form as provided by the Oklahoma State University legal counsel (Appendix B). The waiver form stipulates that all subjects are willingly submitting to an experimental process which has not been completely revealed for their understanding in order to prevent invasion of privacy. The bailiff instructed the jury in the following manner:

As you may be aware, one of the serious problems facing the criminal justice system is that defendants must often wait weeks or months in order for their cases to come to trial. We have begun an experimental test of other methods of trial proceedings to see whether these other methods can both save time and give defendants a fair trial. You have been selected as a representative jury here in Payne County. We would like for you to serve as a jury for the trial that you are about to see.

We have filmed a trial that has already been disposed. However, we do not know whether a jury would reach the same decision for a filmed trial as it would for a trial conducted

in the usual manner. If juries could decide filmed trials in the same fair manner that they decide regular trials, the justice system could save much time and provide defendants with a more speedy trial. In order to test this procedure, we would like for you to view the trial film as seriously as though your final decision were binding on the defendant. Are you ready to begin?

Subjects were given a brief voir dire examination. No voir dire challenges were exercised. After being sworn in by the bailiff, the juries reviewed the videotaped rape trial. The general outline of the trial proceeding is as follows:

<u>Time</u>	<u>Content</u>
7'25"	Information is read to the court.
23'	Testimony of the victim, establishing her charge.
7'	Medical testimony, attesting to the attempted intercourse sometime in the past 12 to 24 hours; no evidence of the use of force other than bruising; no evidence of ejaculation.
1'	Police officer's testimony of bruising of the victim's neck.
16'	Testimony of the defendant, claiming impotence due to intoxication.
7'	Judge instructs the jury and dismisses them to begin deliberation under a unanimity rule.

The judge instructed the jurors to select a foreman and begin deliberation. The auditory portion of all deliberations were covertly recorded. Upon completion of the deliberation, the jury reported its verdict to the bailiff. Jurors were then administered the Attitudes Toward Women Scale (Spence, Helmrich & Stopp, 1973; Appendix C), and Trohdahl and Powell's (1965) Short-Form Dogmatism Scale (Appendix D). After completing the questionnaires, the jurors were debriefed. They were asked not to discuss the case or their verdict with anyone else in order not to contaminate the subject pool. The bailiff answered all

questions except how the actual trial was resolved. Subjects were then thanked for their service and dismissed.

A control group of eight males and eight females viewed the trial videotape in a manner similar to the experimental juries but were not allowed to engage in deliberation. After rendering their individual verdicts, these subjects were administered a 25-item examination covering the content of the trial videotape in order to determine the level of information that can be accurately retrieved immediately following the viewing of the trial (Appendix A).

## CHAPTER X

### RESULTS

All juries returned verdicts of not guilty. The pattern of balloting and amount of deliberation time for each jury may be seen in Table II. All juries reached their final verdict by the third ballot. Significant differences were obtained for the amount of deliberation time utilized by the predominantly male juries (Juries 4 and 5) and the predominantly female juries (Juries 1 and 2), with  $\chi^2(76) = 2549.72$  and  $p < .001$ . Only Jury 1 took a ballot immediately upon entering deliberation. The other juries took their first ballots some time after an initial period of discussion. A content analysis and elapsed time measures were conducted for the deliberations of each jury. An independent rater scored one trial tape for reliability purposes and a correlation coefficient of .96 was obtained for accuracy of both time measures and content assignment. The data were analyzed for group effects and individual effects.

#### A. Group Effects

The group data compare, by means of a  $\chi^2$  analysis, the effect of the various gender combinations of juries on the amount of elapsed time each issue occupied. The amount of time each jury spent discussing these issues was recorded. Since juries discuss different topics and sometimes discuss several topics simultaneously, the nature of the data

TABLE II

## PATTERN OF BALLOTING AND DELIBERATION TIME

Jury	Composition		Ballot 1			Ballot 2			Ballot 3			Deliberation Time
	Male	Female	Not Guilty	Don't Guilty	Know	Not Guilty	Don't Guilty	Know	Not Guilty	Don't Guilty	Know	
1	0	12	5	6	1	3	9	0	0	12	0	17' 09"
2	3	9	2	9	1	0	12	0	---	---	---	47' 39"
3	6	6	2	8	2	4	7	1	0	12	0	22' 12"
4	9	3	1	10	1	0	12	0	---	---	---	25' 15"
5	12	0	0	12	0	---	---	---	---	---	---	4' 26"

dictate two measures of elapsed time scoring. First, the amount of time each jury spent in discussion of single issues was determined. Second, areas of discussion which integrate or cross several issues necessitate scoring of content in six-second units. The pretest material suggested that Oklahoma jurors on the average spend six seconds in verbalization of one sentence. The time measures are presumed to be additive. The varied lengths of deliberation were normalized in order to establish the relative percentages of standard time the different issues occupied the juries. The five juries which varied in gender composition spent significantly varied percentages of time on the different issues involved in the rape trial, with  $\chi^2(76) = 3584.17$ ,  $p < .001$ . Across all juries the issues were rank ordered in descending amounts of occupied time. Both overall percentages of time utilized by the jurors for each issue and individual jury results may be seen in Table III. Male and female jurors were most concerned with whether the defendant could have raped the victim as charged. Overall, harm to the victim was the most discussed issue and occupied 10.41 percent of the time. Determining whether the complainant was abducted received 9.76 percent of the time, establishing whether the defendant was physically capable of intercourse received 8.49 percent of the time, and the possibilities for escape by the victim received 5.98 percent of the time.

In predominantly female juries, the issues of harm to the victim and the defendant's capacity to commit the crime were emphasized. In predominantly male juries, the issues of harm to the victim and the circumstances surrounding initial contact between assailant and victim received the most emphasis during deliberation. Other issues which emerged on a prevalent basis included the testimony of the doctor, particularly

TABLE III

## ELAPSED DELIBERATION TIME PER ISSUE

Issue	July 1		July 2		July 3		July 4		July 5		Overall Percent	Total Time in Sec.	X <sup>2</sup> Comparing Juries 1 & 2 With 4 & 5*
	Per- cent	Abso- lute Sec.	Per- cent	Abso- lute Sec.	Per- cent	Abso- lute Sec.	Per- cent	Abso- lute Sec.	Per- cent	Abso- lute Sec.			
Harm	12.83	192	2.43	25	14.73	354	5.14	68	16.92	45	10.41	684	168.30
Abduction	3.47	52	7.19	74	8.32	200	19.67	260	10.15	27	9.76	613	24.59
Defendant's Capacity	6.41	96	19.24	198	.71	17	4.46	59	11.65	31	8.49	401	287.00
Escape	6.81	102	5.34	55	8.24	198	5.75	76	3.76	10	5.98	441	342.68
Doctor's Testimony	3.81	57	4.66	48	4.16	100	7.26	96	6.39	17	5.26	318	12.30
Alternate Explanations	6.15	92	---	---	19.30	464	2.27	30	---	---	5.54	586	172.18
Legal Require- ments	1.87	28	8.36	86	2.00	48	---	---	11.28	30	2.70	192	182.57
Want Evidence	12.63	189	1.07	11	.83	20	7.03	93	---	---	4.31	313	90.09
Defendant Intoxicated	6.68	100	2.62	27	8.24	198	.45	6	---	---	3.60	331	203.72
Resistance	---	---	8.75	90	3.33	80	2.12	28	---	---	2.84	198	59.78
Parting Company	1.00	15	2.82	29	---	---	4.99	66	---	---	1.76	110	68.88
Travel	3.27	49	---	---	.87	21	3.03	40	---	---	1.43	110	614.90
Defendant's Marital Status	---	---	.58	6	3.00	72	2.57	34	---	---	1.23	112	74.90



TABLE III (CONTINUED)

Issue	July 1		July 2		July 3		July 4		July 5		Overall Percent	Total Time in Sec.	X <sup>2</sup> Comparing Juries 1 & 2 With 4 & 5*
	Per- cent	Abso- lute Sec.	Per- cent	Abso- lute Sec.	Per- cent	Abso- lute Sec.	Per- cent	Abso- lute Sec.	Per- cent	Abso- lute Sec.			
Threat	---	---	---	---	3.70	89	1.97	26	---	---	1.13	115	68.60
Nonverbal Cues	---	---	.78	8	---	---	2.12	28	---	---	.58	36	89.18
Victim Intoxi- cated	---	---	---	---	3.41	82	---	---	---	---	.68	118	24.45
Lack of Ejacu- lation	2.07	31	---	---	.25	6	---	---	---	---	.46	37	254.96
Mistaken Charge	---	---	1.75	18	---	---	---	---	---	---	.35	18	86.52
Reasonable Doubt	1.34	20	---	---	---	---	---	---	---	---	.27	20	123.21
Miscellaneous	31.66	474	34.40	354	18.93	455	31.16	412	39.84	106	31.20	1801	92.43
Totals	100 (%)	1497	99.99 (%)	1029	100.02 (%)	2404	99.99 (%)	1322	99.99 (%)	266	97.98 (%)	6554 (Sec)	

\*All X<sup>2</sup> analyses were significant with  $p < .005$  at 76 degrees of freedom.

concerning whether it was possible for a rape to occur without evidence of ejaculation. All of the juries expressed the desire for more evidence. They discussed the state of intoxication of the defendant and questioned the sobriety of the victim. They were interested in how the complainant came to be in the company of the defendant and how they parted company. The requirements of the law were taken into account in weighing evidence and establishing a standard of reasonable doubt. Several jurors spent time trying out alternate explanations for the facts and motivations involved in the case.

#### B. Individual Effects

In addition to the group data, individual jurors provided attitudinal information to aid in clarification of the social processes operating during a rape trial. The attitudinal data included the jurors' scores on the Attitudes Toward Women Scale and Trohdahl and Powell's Short-Form Dogmatism Scale. Scores on both these measures were correlated with initial juror verdict utilizing a point biserial correlation analysis.

A nonsignificant correlation of .017 was observed between the Attitudes Toward Women Scale scores and the initial juror verdict. A nonsignificant correlation of  $-.207$  was observed for the initial verdict and a measure of juror dogmatism. Scores on the two measures may be found in Table IV.

Some jurors are expected to change their ballots during the deliberation process. The relationship of ballot changing behavior to gender of the juror was assessed. Female jurors changed their initial guilt or abstention verdicts in favor of acquittal significantly more than

TABLE IV

SUMMARY STATISTICS OF JURORS' ATTITUDES  
TOWARD WOMEN AND DOGMATISM SCORES

Jury No.	Composition	Attitudes Toward Women		Dogmatism	
		Mean	Standard Deviation	Mean	Standard Deviation
1	12 females	78.83	10.90	89.50	9.95
2	9 females/3 males	75.08	7.43	94.16	10.32
3	6 females/6 males	71.00	8.63	71.00	9.76
4	9 males/3 females	74.45	7.70	96.09	5.60
5	12 males	65.00	9.07	95.67	11.29
Overall means:		Females	76.73		92.87
		Males	71.47		94.03

male jurors,  $\chi^2(1) = 18.28$ ,  $p < .005$ . Over all juries, changes from initial balloting were observed for 13.3 percent of male jurors and 36.7 percent of female jurors, for an average of 25 percent of the total juror ballots.

The control group of eight male and eight female subjects scored 82.2 percent on the information recall test. Within that group, male subjects accurately recalled 83.13 percent and female subjects recalled 81.25 percent of the material.

## CHAPTER XI

### DISCUSSION

#### A. Implications

The experimental juries showed significant differences in the overall amount of deliberation time expended for each issue. The juries discussed a variety of issues, yet each jury eventually voted to acquit the defendant of rape charges. The scores on the Attitudes Toward Women Scale and the Dogmatism Scale do not indicate a systematic predisposition for guilty verdicts. The issues which received more emphasis during deliberations were harm to the victim, how the victim and defendant became involved, whether the defendant had the physical capacity to commit rape, and possibilities for the victim to escape the defendant. Both male and female jurors were most concerned with harm to the victim. The predominantly female juries were also concerned with the defendant's capacity to commit the crime as charged and predominantly male juries were interested in how the defendant and victim came to share one another's company. The jurors may have different emphases and areas of concern, but they served with equal conscientiousness for the most part.

Of the trial jurors, significantly more females than males changed their verdicts. Although the pretest evidence suggests that females more often than males will individually find the defendant guilty, social influence processes operating during deliberation works toward acquittal.

The literature reports leniency shifts as a frequently observed phenomenon accompanying deliberation. The verdict change for each juror is specific and is an inseparable part of an adversary jury deliberation. One element may well be the array of attitudinal factors which are advanced by individual jurors. The attitudes affect the verdicts in an indirect fashion by influencing communication patterns, filtering the recalled information available to each juror, and determining the relative weights each juror assigns to the testimony of the defendant and prosecutrix.

The implications of these findings for the criminal justice system include that focus on specific issues alone will not dictate a jury verdict. The issue of harm to the victim has the most salience for male and female jurors alike.

#### B. Attitudinal Milieu

The jurors during deliberations revealed a number of attitudes which they held prior to serving as jurors for a rape case. In many cases the attitudes were manifested with some degree of emotional intensity and often they were based on irrational or nonapplicable beliefs regarding the dynamics of rape, and in a larger sense, about the nature of male/female relationships. The suspiciousness toward the female victim which is prevalent in rape trial jurors (Krulowitz, 1977; Taylor, 1977) was observed in these experimental subjects as well. In all of the juries examined, the jurors showed a consistent emphasis on the testimony of the complainant. She is the accuser and it is to the accuser that the burden of proof properly falls. The juries spent 32 percent of their collective discussion time on the topic of her testimony and personal characteristics and 13.5 percent discussing the testimony and characteristics of the accused. Such

an imbalance in the time proportions suggests that the testimony of the accuser was tried in every detail by the jurors, while the testimony of the accused was presumed to be essentially accurate. The jurors did not necessarily believe in the truth of the testimony of the defendant. As one juror stated: "They are both lying. Let's send them up for perjury." In spite of such comments casting doubt on the veracity of the defendant, all experimental juries acquitted the defendant of rape charges.

Overwhelming emphasis on the complainant's testimony was not the only sign of the suspiciousness with which the jurors viewed the complainant. A theme repeated across juries was the desire for more witnesses. The jurors were faced with an ambiguous situation in which they were forced toward a resolution. During the deliberation process each juror must have felt the pressures of social influence aimed toward social consensus, coupled with the constraints posed by the facts in the case, and the effect of attitudes held by individual jurors which were formed prior to their experimental service. The jurors would have liked to have the case virtually resolve itself on evidentiary bounds, yet real world juries face a similar ambiguous situation. The construction of the case revolved around the testimony of the prosecutrix, the defendant, the medical doctor's and the police officer's testimony. Numerous complaints were made about the shoddy examination performed by the medical doctor without realization that in real world situations the examination often is precisely as superficial. The jurors wanted extra witnesses to every detail of the victim's version, even expressing the desire for witnesses to the actual rape sequence. "If there were just more witnesses to the fact that she'd been raped" (male juror). In only one instance did a juror attempt to support the victim: "You'd never know 100 percent unless you

were there." In view of the finding by Kalven and Zeisal (1966) that there are eyewitnesses to the rape in only 4 percent of the tried cases, many rape juries will dismiss the charges of rape victims that are unsubstantiated by eyewitness testimony. Such a tendency imposes an excessive legal burden on the victim of a perpetrated crime.

### 1. Sexism and Mythology

The sexism exhibited toward the female complainant during jury deliberations was an influence toward acquittal of the male defendant on a rape charge. The suggestion has been made that one problem that women have in attaining convictions for their rapists is that the accuser is always female and the defendant is always male. One juror stated: "It's just his word against hers--there's the doubt right there." The jurors also attributed differing perceptions of the victim's nonverbal cues during the videotaped trial to differing motivations: during deliberations in Juries 1 and 3 jurors who felt that the victim was upset interpreted it as evidence she was lying, while jurors who felt she was not upset cited it as evidence she had not been raped.

The sexism was evidenced in the citation by jurors of various myths about rape and the dynamics of male/female interactions. In juries composed of mixed groups of males and females, the jurors checked the accuracy of certain elements of testimony across gender lines. Mixed juries discussed various issues such as the feasibility of attempted escape of the victim, whether the victim should fight back against her assailant, whether a male can be too drunk to have intercourse, and whether males experience impairment of ejaculation under some conditions. In same sex juries, or predominantly same sex juries, they tend to assume things about



the functioning of the other sex. In general, the females were more responsive and knowledgeable about male functioning and psychology than males were about females. However, probably as a supposition, they tended to attribute super human capacities to the male. For example, one female juror expressed the following belief: "I don't think that a guy can be too drunk not to have intercourse." Similarly, individual jurors in four juries assumed that if he raped her there would be ejaculation of semen, in contradiction to findings previously cited in the literature of a lack of ejaculation as a common finding in single and multiple assailant rapes (Groth & Burgess, 1977). Both male and female jurors expressed disbelief that a female victim could be ignorant of the details of male physiology and capacities to the extent that she could be uncertain whether or not her assailant had an erection. The jurors had no tolerance of her innocence in sexual matters and assumed her discomfort was due to her attempt to lie about the matter. They felt that "If she hadn't experienced intercourse before there would have been more evidence, and if she had she would have known if he was erected." One consultation between the sexes took the following form: Female: "If you were really drunk and you think that it's going to be necessary to rape a girl because you need sex so bad, could you get it up and go through the whole thing?" Male: "If you need sex that bad it would seem it had already come up" (laughter). No juror ever challenged the necessity for rape in order to discharge sexual needs.

One myth which surfaced during the deliberations of Juries 2 and 3 contained the belief that married men do not rape. Some jurors made errors in recall of presented information on the matter of marital status of the defendant. The flavor of the attitude can be seen in the following

comments drawn from the deliberations of those juries. "Why was he out of town if he was married? He got married afterwards [error, uncorrected by other jurors]." "Why would a married man rape? He wasn't married then [error]." "Some married guy isn't going to take some chick to the field anyway." In a twist of expectations, some jurors held the wife responsible for her husband's criminal act. "Why if he went home wasn't his wife there?" Female jurors as well as male jurors held the wife responsible, as the discussion between these three females illustrates. Female 1: "If he needed some, he could go home to his wife." Female 2: "They shouldn't have brought that up in testimony." Female 3: "That's not true though. Maybe his wife isn't putting out and maybe she's too far away and maybe she's got the crud."

One male juror excused the defendant in the following manner: "You'd think that his wife would have known about him before they got married, surely." The suggestion is the mirror image of the earlier myth that married men do not rape, namely that rapists do not marry. The effect of the myth that married men do not rape is to produce a leniency shift for married male defendants for rape charges. As one male juror expressed in the safety of the all-male jury: "Anybody want to convict that old boy just for what he's done? He's paid. He's gotten married."

## 2. Resistance

Female jurors in general were more understanding to the victim than male jurors on the issue of proper resistance. The female jurors recognized that "With his hands he could kill her, that's all you need." The bruises on her neck, indicative of strangulation, were counted by some jurors as evidence of force, inflicted harm and proof that the defendant

possessed "apparent power of execution" of his threat to kill her as specified by Oklahoma law. Other jurors viewed them as superficial marks sustained in a moment of passion. Male jurors tended to assume that if the victim did not manifest unceasing general physical resistance, then she had not in fact been raped. The relative attitudes of the jurors may be seen in the following excerpt from the nine female-three male jury:

Male: "If some guy on the Strip 150 pounds bigger than me hit me, I'd hit him back." Female: "But you're a guy, too." Male: "He could beat hell out of me. . . ." Female: "I'd hit the guy back." Female: "I've never hit anybody." Female: "I'd begin right then." Male: "I'd start it. You know that he's going to kill you anyway but you might as well leave him with some thought." Female: "No way. I'd be petrified."

The female complainant in the rape trial segment had rather passively accepted her violation, as many women do who are overpowered physically and/or psychologically. Jurors who hold traditional attitudes will interpret her passivity not as the product of her American socialization but rather as evidence of her collusion in her rape. Since they also discount actual inflicted harm, the rape victim must draw an exceedingly fine balance between providing enough resistance to avoid collusion charges and not enough resistance to provoke her rapist to kill her.

### 3. Consent and Collusion

Individual jurors serving in various juries dealt with the ambiguity inherent in the situation by trying out alternative stories which varied in the amount of consent and collusion attributed to the victim. These stories ranged from probable explanations which were based on the present-ed testimony to highly improbable fanciful tales; similarly, other jury

members sometimes endorsed and sometimes ridiculed these alternative interpretations. Occasionally, the stories contained the presumption that the rape had been actually a completed act, yet the intent of the teller was to excuse or defend the accused. The first example captures the idea that the female loses her right to refuse intercourse after some unspecified time or action. Female: "She willfully went along but she changed her mind before it even happened--and he was too far gone and she said no and he said you can't go this far and turn me down." Female: "He might have thought she was teasing." Male: "If they didn't do anything, what is the purpose of getting him committed for rape?" Female: "He did do something but she went along--she could have been a tease for all that you know--and decided 'Heck, I'm sobered up--forget it' and he said 'Well, tough luck, sweetheart.'"

Not all jurors endorse the presumption that the victim consents to intercourse if she consents to share the company of a male, as the following two illustrations suggest. Female: "One of them is lying. Maybe she's lying on part of it and she's just embarrassed to say 'I did leave with him--he did rape me--and now I'm upset.' That could happen too. We can't rely on witnesses to a forced abduction; they could have left and she changed her mind." Female: "She left willingly; he was too fast for her; she could have been real drunk and started sobering up toward the end --he was still drinking--he raped her and she got hysterical." Some jurors assume that intercourse with consent may provoke guilt in the female. The implication is that female guilt may be manifested in unbased claims of forcible rape. Female: "Maybe she felt really stupid, drank too much beer, went off with some guy, especially one that's married, and here she is. Now this is three years ago; maybe things aren't quite so

liberal as now." Unfounded rape charges can also be produced by the outrage of "a woman scorned," according to some jurors. Female: "Maybe it happened that he left her and said he didn't want to have anything to do with her and she got upset because she really liked him." Some jurors excused the defendant of all collusion in the matter, ignoring the testimony of the doctor regarding penetration and infliction of physical harm.

Female: "I think she went to drink beer with him and she got drunk and wild and he didn't want to take advantage of her because he knew that she was drunk and not a lady or something." The factors of inflicted harm and penetrating intercourse were separated and rearranged sequentially by some of the jurors. Female: "She went out with him and he set her up and you know and she big-mouthed him and he beat her up." Male: "As they were leaving she could have gotten this idea in her head and started being a bitch and he might have hauled off and walloped her." Female: "She has more than one bruise."

#### 4. Harm to the Victim

Alternative explanations for the harm to the victim were more difficult to construct than were alternative stories about the charged rape. Some explanations which were advanced included the possibility that the victim had had a fight with her boyfriend the night before, that she had been drunk and fallen down, and that she could have gotten the bruises during the week preceding the incident. One juror explained the doctor's testimony indicating vaginal swelling consistent with intercourse in terms of the possibility that she could have had intercourse with someone else, which would have been legitimate if mistaken identity had been an offered defense. Another juror explained the swelling as a possible side effect

of riding a bicycle. One juror made the following statement: "We must consider that he may have been plastered and couldn't get it up. That could account for her vaginal bruising." Here the juror has admitted the fact of penetration but the intent was to refute the charge of rape. Both introduced testimony and the visual images of the victim and defendant suggested that she was of slight frame weighing 103 pounds and that he was a muscular man of approximately six feet in height. Regardless of these considerations, male and female jurors felt that she could have physically restrained the assault against her person. Female: "She could have fought him off. I'd have tore [sic] his eyeballs out of it was [sic] me." "She never saw a gun or weapon to hurt her." "If he was that drunk [i.e. too drunk to have an erection] she wouldn't have to use that much force to push him off if he was just going to beat her up."

##### 5. Response to Victimization

In the process of deliberations, several jurors revealed their attitudes concerning what was a "proper" response to victimization. Some jurors felt that the victim must exhibit unceasing resistance for the rape charge to be justified. Actual physical resistance was the accepted standard of proper behavior. Females also advanced other methods of response. The dialogue following contains the response of passive acceptance. Female: "Both have discrepancies in their stories. I feel she did something she felt guilty about doing that was not right. She is trying to cover it up. Lots of girls do that." Female: "They do go through all that?" Female: "You know how people try to convince themselves." Female: "She wasn't very convincing to me and I think if I'd been raped,

I could convince someone very well." Female: "Could you, if you were so shook up? I'd try to block the whole thing from my mind."

The victim has little resolution other than internalization of the rape experience and silent tolerance of the victimization, according to experimental jurors. These themes are extended in the idea captured by the following: "That girl would have wanted to be dead if it actually happened." One female juror who consistently excused the defendant and took an actively pro-defendant offensive stance responded to a comment from another female juror in the following manner: "If I was her and been scared and hit, I wouldn't have run in the country where it would do no good." Female: ". . .nothing else to happen but to die--he'd already done it all." She thus believed that the defendant accomplished the rape and simultaneously refused to declare him guilty in the matter.

The repeated theme advocating the passive acceptance and internalization of the victimization seems to be founded on the belief that the victim is either actively responsible for the rape or at least colludes in the process. Jurors attributed responsibility to the victim for willingly accompanying the defendant prior to the rape (directly counter to presented testimony), for being in a college beer bar in the first place, and for being responsible for assaulting the defendant sexually as evidenced in the following quotes: Female: "Probably was her fault, she got with him." Male: "There's also the question of the Jail West, the place. Used to be a pretty wild place--a lot wilder than now." Female: "Maybe she was drunk. When you're drunk it can change all kinds of things. Girls who wouldn't do anything sober when drunk start attacking a guy." Notice that the juror made no comment about the possibility of the reverse situation in which the female could have been assaulted by a

drunken male, as presented in the testimony. Juries thus exhibited a consistent tendency to hold the victim to some degree responsible for her rape.

#### 6. Leniency shift

All of the experimental juries refused to convict the defendant. The females in the pretest group voted to convict the defendant by a 67 percent to 33 percent margin. None of the 30 females in the experimental group voted for conviction on the final ballot. Sometime in the deliberation proceedings or conditions surrounding the deliberation process 25 percent of the jurors experienced a leniency shift. Several factors are suggested by the data and observations of the experimenter. Female jurors significantly more often than male jurors changed their votes after the first ballot. According to experimental observation, female more often than male jurors behaved in a nonassertive manner during the deliberation interaction. They hesitated to pursue a heated discussion. They sat silently at times rather than advance arguments to the contrary, particularly when the speaker was male. For the most part, they did not challenge the sexist assumptions of their peers. In light of the finding from the control group that the jurors should have approximately 82.2 percent recall for the presented trial material, the verdicts of each respective jury cannot be based on sheer failure of recall for the facts in the case.

Two factors must be discussed in consideration of the leniency shift observed in all of the juries. One, the subjects know that they are in an experiment rather than an actual trial. The experimental sequence in the court and deliberation invoked high mundane realism conditions. During deliberations, jurors often prefaced their discussion concerning



verdicts with comments such as "In real life"; "If this were for real, and we were deciding if this guy is going to prison." These statements indicate that the subjects were taking their responsibility seriously although they were aware of the difference between the experimental and actual jury service. Secondly, the leniency shift could have been accelerated due to the restricted age range of the jurors. The subjects are at a time in their lives when they are malleable to social influences. Yet, the fact remains that all experimental jurors were currently eligible to serve as actual jurors in Payne County. There must be similar social pressures in any jury regardless of its specific age composition, since all juries are faced with an ambiguous situation which must be resolved if at all possible. Some jurors were able to resist social consensus attempts through the first two ballots, although all juries arrived at a consensus by the third ballot. In all juries the final verdict was in the direction of the initial majority opinion. Some jurors were swayed into a leniency shift to align themselves with a reasonable doubt standard. A few expressed a standard more strict than the reasonable doubt standard and preferred a "beyond the shadow of a doubt" standard. This conservatism alone cannot account for the leniency shift. In the American system of justice the presumption of innocence always rests with the defendant, which exerts a similar conservative influence during actual criminal trials.

### C. Conclusion

The jurors revealed conservative and traditional attitudes toward women on the Attitudes Toward Women Questionnaire. They were modestly dogmatic as a group as measured by the Trohdahl and Powell's Short-Form

Dogmatism Scale (1965). They refused to convict a defendant on rape charges on the basis of evidence sufficient to convince 53 percent of their peers. They spent a preponderance of their deliberation time discussing the testimony and character of the prosecutrix. They operated under mythological beliefs regarding the nature and dynamics of rape. Some jurors paid attention to the judge's instruction regarding the law and rules of evidence while some jurors either do not understand or they do not apply them. The experimental juries assembled for this investigation of the impact of juror attitude on the disposition of a rape trial have revealed that attitudes they hold prior to serving as jurors affect the outcome of a rape trial. Generally the attitudes are conservative regarding the role of women in American society and thus hold the woman responsible for her violation if she has already violated any of the conservative strictures regarding women's approved scope of behaviors. The conservative standards of "reasonable doubt" used by these jurors virtually insure that an innocent man would rarely if ever be convicted of a rape which was perpetrated without sensational features and with a minimum of physical harm. In light of the current findings, guilty men would rarely be convicted under the same conditions. In this author's opinion, in order to counter the effects of sexism and conservative beliefs regarding the proper standard for women's behavior prosecutors should as a matter of course add an expert witness on rape as a social phenomenon to counter the effects of juror misinformation regarding the nature and dynamics of rape. As individual women become more assertive in interpersonal situations such as jury deliberations, they will have more overt evidence of the courage of their convictions. One effect of that change could well be a higher conviction rate for rapists. A second effect could

be that fewer women will be raped as they grow into the power of an active rather than reactive stance with life. Men will not cease to rape until the crime is at least as hazardous to the assailant as to the victim. The legal system will not change its sexist treatment of rape victims until society no longer accepts the validity of that sexism. There can be little change in that direction until women no longer passively accept sexual assault and internalize the guilt and pain surrounding the experience. If and when women begin to turn the anger from their violations and restrictions into a process of constructive change, social and legal sexism will at last fail.

Rape as a social issue is a specialized form of interpersonal violence. Through its humiliation and objectification of the victim, rape is the logical weapon of sexual subjugation. The current controversy about rape originated with women's use of violence in resistance or in revenge against their assailants. These issues sparked much debate and some reform in the concepts of individual rights and criminal justice. The data suggest that the next issue of importance in the evolution of the rape issue is a change in the cultural attitudes of and toward women.

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APPENDIX A

INFORMATION RECALL QUESTIONNAIRE

CIRCLE THE LETTER OF THE CORRECT ANSWER

1. The complainant was:
  - (a) Karen Brown
  - (b) Barbara Spears
  - (c) Jill James
  - (d) Linda Daniels
  
2. What was the marital status of the defendant?
  - (a) single
  - (b) married
  - (c) divorced
  
3. How did the defendant and complainant come to share each other's company on the night in question?
  - (a) a date
  - (b) they went to drink beer
  - (c) he kidnapped her
  - (d) testimony varies on this point
  
4. Where did they part company that evening?
  - (a) on the Strip (Washington Street)
  - (b) in the country
  - (c) 6th and Main Streets
  - (d) Miller and Main Streets
  
5. What did the testimony of the police officer concern?
  - (a) arrest of the defendant
  - (b) intake report on the complainant
  - (c) intoxication of the defendant while driving
  - (d) bruises on the complainant
  
6. The defendant claims he is not guilty due to:
  - (a) mistaken identity
  - (b) impotence
  - (c) consent
  - (d) extenuating circumstances
  
7. Was the complainant intoxicated?
  - (a) yes
  - (b) no

8. Was the defendant intoxicated?
  - (a) yes
  - (b) no
  
9. The defendant was armed with:
  - (a) a tire iron
  - (b) a gun
  - (c) a knife
  - (d) nothing
  
10. According to the doctor's testimony, the victim was bruised on her:
  - (a) neck and vagina
  - (b) back
  - (c) neck only
  - (d) legs
  
11. According to testimony, the defendant threatened the complainant that:
  - (a) he would leave her in the country
  - (b) he would blackmail her
  - (c) he would kill her
  - (d) he would beat her up
  
12. Did the doctor find semen or male fluids in the vaginal specimen?
  - (a) yes
  - (b) no
  
13. The doctor spent \_\_\_ minutes in examination of the complainant.
  - (a) 0-5
  - (b) 10-15
  - (c) 20-25
  - (d) 30-35
  
14. The defendant and complainant went:
  - (a) to an oil lease
  - (b) to Gibson's parking lot
  - (c) to a graveyard
  - (d) drinking on the strip
  
15. The complainant resisted the defendant by:
  - (a) scratching him
  - (b) protesting verbally
  - (c) fighting back physically
  - (d) the victim did not resist
  
16. The victim was accompanied to the Jail West by:
  - (a) the defendant
  - (b) Ray Houston
  - (c) Barbara Spears
  - (d) Karen Brown

17. The standard that jurors use in determining the guilt or innocence of a defendant is:
  - (a) greater than 50% doubt
  - (b) beyond the shadow of a doubt
  - (c) beyond a reasonable doubt
  - (d) without a doubt
  
18. An essential element in the legal definition of rape is:
  - (a) vaginal penetration
  - (b) ejaculation
  - (c) harm to the victim
  - (d) chastity of the victim
  
19. The defendant was arrested:
  - (a) the same evening
  - (b) the next day
  - (c) one week after the incident
  
20. Where was the complainant's purse?
  - (a) in the defendant's car
  - (b) in the Jail West
  - (c) in the country

APPENDIX B

WAIVER RELEASE AND INDEMNITY AGREEMENT

In consideration of permitting me, \_\_\_\_\_, to participate in the following described activity: Serve as a juror in an experiment being conducted by Gail Walker, entitled "Psycho-Legal Aspects of Rape," beginning on the \_\_\_\_ day of \_\_\_\_\_, 1978, I hereby voluntarily release, discharge, waive, and relinquish any and all actions or causes of action for personal injury, property damage, or wrongful death occurring to me, arising as a result of engaging or participating in said activity or any activities incidental thereto, wherever or however the same may occur and for whatever period said activities or participation may continue. I, for myself, my heirs, executors, administrators, and assigns hereby release, waive, discharge and relinquish any action or causes of action, aforesaid, which may hereafter arise for me and my estate, and agree that under no circumstances will I or my heirs, executors, administrators, and assigns prosecute, present any claim for personal injury, property damage, or wrongful death against Gail Walker. It is my intention by this instrument to exempt and relieve Gail Walker from liability for personal injury, property damage, or wrongful death caused by negligence.

I understand that I am agreeing to participate as a juror in a mock courtroom procedure and that the subject matter to deal with in said courtroom procedure will involve a rape case, which will include testimony and evidence relating explicitly details concerning the alleged rape and will involve portrayal of the rape sequence, to include the use of suggestive words and words which may be offensive and considered to be obscene.

I acknowledge that I have read the foregoing and have been fully and completely advised to the potential dangers incidental to engaging in the activity described herein above and am fully aware of the legal consequences of signing this instrument.

DATED this \_\_\_\_ day of \_\_\_\_\_, 1978.

\_\_\_\_\_  
PARTICIPANT

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

## APPENDIX C

### ATTITUDES TOWARD WOMEN SCALE

#### INSTRUCTIONS:

The statements listed below describe attitudes toward the role of women in society that different people have. There are no right or wrong answers, only opinions. You are asked to express your feelings about each statement by indicating whether you (A) agree strongly, (B) agree mildly, (C) disagree mildly, or (D) disagree strongly. Please indicate your opinion by blackening either A, B, C, or D on the answer sheet for each item.

1. Swearing and obscenity are more repulsive in the speech of a woman than of a man.
2. Women should take increasing responsibility for leadership in solving the intellectual and social problems of the day.
3. Both husband and wife should be allowed the same grounds for divorce.
4. Telling dirty jokes should be mostly a masculine prerogative.
5. Intoxication among women is worse than intoxication among men.
6. Under modern economic conditions with women being active outside the home, men should share in household tasks such as washing dishes and doing the laundry.
7. It is insulting to women to have the "obey" clause remain in the marriage service.
8. There should be a strict merit system in job appointment and promotion without regard to sex.
9. A woman should be as free as a man to propose marriage.
10. Women should worry less about their rights and more about becoming good wives and mothers.
11. Women earning as much as their dates should bear equally the expense when they go out together.
12. Women should assume their rightful place in business and all the professions along with men.



13. A woman should not expect to go to exactly the same places or to have quite the same freedom of action as a man.
14. Sons in a family should be given the more encouragement to go to college than daughters.
15. It is ridiculous for a woman to run a locomotive and for a man to darn socks.
16. In general, the father should have greater authority than the mother in the bringing up of children.
17. Women should be encouraged not to become sexually intimate with anyone before marriage, even their fiances.
18. The husband should not be favored by law over the wife in the disposal of family property or income.
19. Women should be concerned with their duties of child bearing and house tending, rather than with desires for professional and business careers.
20. The intellectual leadership of a community should be largely in the hands of men.
21. Economic and social freedom is worth far more to women than acceptance of the ideal of feminity which has been set up by men.
22. On the average, women should be regarded as less capable of contributing to economic production than are men.
23. There are many jobs in which men should be given preference over women in being hired or promoted.
24. Women should be given equal opportunity with men for apprenticeship in the various trades.
25. The modern girl is entitled to the same freedom from regulation and control that is given to the modern boy.

APPENDIX D

TROHDAHL AND POWELL'S SHORT FORM DOGMATISM SCALE

JURY \_\_\_\_\_

JUROR NUMBER \_\_\_\_\_

DIRECTIONS: Please answer all of the questions. They are intended to measure your opinions--there are no right or wrong answers. Answer them according to the following scale:

- |                        |                           |
|------------------------|---------------------------|
| 1 = Agree very much    | 5 = Disagree a little     |
| 2 = Agree on the whole | 6 = Disagree on the whole |
| 3 = Agree a little     | 7 = Disagree very much    |
| 4 = Don't know         |                           |

.....

1. \_\_\_ In this complicated world of ours the only way we can know what is going on is to rely on leaders or experts who can be trusted.
2. \_\_\_ My blood boils whenever a person stubbornly refuses to admit he is wrong.
3. \_\_\_ There are two kinds of people in this world: those who are for the truth and those who are against the truth.
4. \_\_\_ Most people just don't know what's good for them.
5. \_\_\_ Of all the different philosophies which exist in this world there is probably only one which is correct.
6. \_\_\_ The highest form of government is a democracy and the highest form of democracy is a government run by those who are most intelligent.
7. \_\_\_ The main thing in life is for a person to want to do something important.
8. \_\_\_ I'd like it if I could find someone who would tell me how to solve my personal problems.
9. \_\_\_ Most of the ideas which get printed nowadays aren't worth the paper they are printed on.
10. \_\_\_ Man on his own is a helpless and miserable creature.

11. \_\_\_ It is only when a person devotes himself to an ideal or cause that life becomes meaningful.
12. \_\_\_ Most people just don't give a "damn" for others.
13. \_\_\_ To compromise with our political opponents is dangerous because it usually leads to betrayal of our own side.
14. \_\_\_ It is often desirable to reserve judgment about what's going on until one has had a chance to hear the opinions of those one respects.
15. \_\_\_ The present is all too often full of unhappiness. It is only the future that counts.
16. \_\_\_ The United States and Russia have just about nothing in common.
17. \_\_\_ In a discussion I often find it necessary to repeat myself several times to make sure I am being understood.
18. \_\_\_ While I don't like to admit this even to myself, my secret ambition is to become a great man like Einstein, or Beethoven, or Shakespeare.
19. \_\_\_ Even though freedom of speech for all groups is a worthwhile goal, it is unfortunately necessary to restrict the freedom of certain political groups.
20. \_\_\_ It is better to be a dead hero than a live coward.

.....

SCALE:

- |                        |                           |
|------------------------|---------------------------|
| 1 = Agree very much    | 5 = Disagree a little     |
| 2 = Agree on the whole | 6 = Disagree on the whole |
| 3 = Agree a little     | 7 = Disagree very much    |
| 4 = Don't know         |                           |

APPENDIX E

GENERAL DEMOGRAPHIC INFORMATION

JURY \_\_\_\_\_ DATE \_\_\_\_\_

JUROR NUMBER \_\_\_\_\_ FOREMAN \_\_\_\_\_

CASE \_\_\_\_\_ VERDICT \_\_\_\_\_

.....

NAME \_\_\_\_\_

SEX: M F (circle one)

AGE: \_\_\_\_\_ RACE \_\_\_\_\_

MARITAL STATUS: SINGLE MARRIED WIDOWED DIVORCED

Have you ever served on a jury? yes no

if yes, civil or criminal

Have you or a member of your family ever been convicted of a crime?

yes no

Are you related to or friends with a police officer?

yes no . . . law enforcement officer? yes no

Have you ever been the victim of a crime? yes no

if yes, what type of crime? \_\_\_\_\_

Was it a crime against your person (such as assault)? yes no

Was it a crime against your property? yes no

Was it a sex crime? yes no

What is your occupation? \_\_\_\_\_

Spouse's occupation? \_\_\_\_\_

What is your religion? \_\_\_\_\_

How often do you attend church? weekly monthly yearly never

What level of education have you last completed? \_\_\_\_\_

Of what social groups are you a member?

When what I do is of no force as to the purpose for which I do it, let it be of force to as great a degree as it can.

VITA 2

Charlene Gail Walker

Candidate for the Degree of

Doctor of Philosophy

Thesis: PSYCHO-LEGAL ASPECTS OF RAPE

Major Field: Psychology

Biographical:

Personal: Born in Clayton, Oklahoma, March 24, 1952, the daughter of Mr. and Mrs. F. B. Walker.

Education: Graduated from Clayton High School, Clayton, Oklahoma, in May, 1970; received the Bachelor of Science degree in Psychology from Oklahoma State University in 1974; received the Master of Science degree in Psychology from Oklahoma State University in 1976; completed requirements for the Doctor of Philosophy degree at Oklahoma State University in July, 1978.

Professional Experience: Graduate instructor, Department of Psychology, Oklahoma State University, 1975-1977; graduate research assistant, Department of Psychology, 1974-1976; Oklahoma State University Task Force on Curriculum, Women's Council, 1976-1977; member, Oklahoma Womens' Studies Association, 1977-1978; member, Steering Committee, South Central Region, National Women's Studies Association, 1977-1978; Regional Delegate-at-Large, National Women's Studies Association (founding convention), San Francisco, California, January 13-16, 1977; member, Representative International Women's Year Caucus, Oklahoma Women's Conference, June, 1977; Representative Caucus Delegate, National Women's Conference, Houston, Texas, November, 1977.

Activities and Honors: President's and Dean's Honor Rolls; Phi Kappa Phi; Phi Delta Kappa; Association of Women Students, Chair of Education Committee, 1976-1977; Psychology Graduate Student Association, Social Psychology Representative, 1976-1977, and 1977-1978.